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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1948

No. 51

RAILWAY EXPRESS AGENCY, INC., CHARLES GERCHARIO, MICHAEL LONG, ET AL., APPELLANTS,

vs.

PEOPLE OF THE STATE OF NEW YORK

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

FILED MAY 4, 1948.

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN COURT OF APPEALS OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, Plaintiff-Respondent,

against

RAILWAY EXPRESS AGENCY, INC., Defendant-Appellant

PEOPLE OF THE STATE OF NEW YORK, Plaintiff-Respondent,

against

CHARLES GERCHARIO, MICHAEL LONG, and 11 others, Defendants-Appellants

STATEMENT ON APPEAL

These are appeals by the defendants to the Court of Appeals pursuant to permission granted by Hon. John T. Loughran, Chief Judge of the Court of Appeals, on the 18th day of February, 1947, from the orders of the Court of Special Sessions of the City of New York, Appellate Part, First Judicial Department, dated the 21st day of January, 1947, affirming the judgments of conviction of the defendants in the Traffic Court of the City Magistrate's Court of the City of New York, on the 28th day of March, 1946, [fol. 2] with respect to the defendants Charles Gerchario, Michael Long, and 11 others, and on the 2nd day of July, 1946, with respect to defendant Railway Express Agency, Inc., on a charge of violating Article 9, Section 124 of the Traffic Regulations of the City of New York.

The defendants Charles Gerchario, Michael Long, and 11 others were in the employ of defendant Railway Express Agency, Inc., operating its vehicles when charged with violating Article 9, Section 124 of the Traffic Regulations of the City of New York.

All of the defendants are represented by Davis Polk Wardwell Sunderland & Kiendl, and the Corporation Counsel of the City of New York, appears for the People of the State of New York plaintiff.

There has been no change in parties or their attorneys except that on the 1st day of January, 1947, Charles E. Murphy succeeded to and in place of John J. Bennett, as Corporation Counsel of the City of New York.

[fol. 3] In City Magistrate's Court of the City of New York

Traffic Court—Borough of Manhattan

People of the State of New York on the Complaint of George W. Horner, Plaintiff,

against

Railway Express Agency, Inc., Defendant

Notice of Appeal to the Court of Special Sessions, Appellate Part, First Department

Sirs:

Please take notice that the defendant herein appeals to the Appellate Part of the Court of Special Sessions held in and for the First Judicial Department from the judgment convicting it of a violation of Section 124 of Traffic Regulations adopted by the Police Commissioner of the City of New York, and sentencing it to a fine of $25 rendered in the Magistrates Court of the City of New York, Traffic Court, Borough of Manhattan, by Hon. Morris Rothenberg, on the 2nd day of July, 1945.

The grounds for taking this appeal are as follows:

1. That the acts proved by the People did not as a matter of law or of fact constitute a violation of said §124.

[fol. 4] 2. That said §124, correctly interpreted, permits the carrying of business notices of the defendant and others upon the business delivery vehicles of the defendant described in the information in that such vehicles were engaged in the usual business or regular work of the defendant and were not used merely or mainly for advertising.

3. That under the construction put upon said §124 by the Magistrate it is arbitrary, unreasonable and void and exceeds the powers delegated by the State of New York to the City and the Police Commissioner.

4. That under the construction put upon said §124 by the Magistrate its violates the rights of the defendant under the Fourteenth Amendment of the United States Constitution and Article I, Section 6, of the Constitution of the State of New York.

5. That the business delivery vehicles of the defendant (including those described in the information) using the streets of the City of New York preponderantly carry goods in interstate commerce and that the construction of said §124 by the Magistrate constitutes an undue burden upon interstate commerce and exceeds the police power of the City of New York.

6. That under the construction put upon said §124 by the Magistrate it deprives defendant of the equal protection of the laws in violation of the Fourteenth Amendment of [fol. 5] the United States Constitution and Article I, Section 11 of the Constitution of the State of New York.

7. That if said §124 was correctly interpreted by the Magistrate to deprive defendant of revenue from carrying the business notices of others on defendant's delivery vehicles engaged in the usual business or regular work of the defendant and not used merely or mainly for advertising, the Police Commissioner of the City of New York in promulgating said §124 has exceeded the powers granted to him by §435 of the Charter of the City of New York.

8. That the Magistrate erred in refusing to grant defendant's motion to dismiss on the law at the close of the People's case.

9. That the Magistrate erred in excluding evidence tendered by the defendant as shown by the stenographic transcript.

10. That the Magistrate erred in convicting the defendant of a violation of said §124.

[fol. 6] Dated, July 27, 1945.

Davis, Polk, Wardwell, Sunderland & Kiendl, Attorneys for defendant, Railway Express Agency, Inc., 15 Broad Street, New York 5, N. Y.

To:

The Clerk of the Appellate Part of the Court of Special Sessions.
The Chief City Magistrate.
The Chief Clerk of the Magistrate's Court.
The District Attorney, New York County.
The Corporation Counsel of the City of New York.
Clerk of the Traffic Court, 455 West 151st Street, Borough of Manhattan, New York, N. Y.

[fol. 7] IN CITY MAGISTRATE'S COURT OF THE CITY OF NEW YORK

TRAFFIC COURT—BOROUGH OF MANHATTAN

PEOPLE OF THE STATE OF NEW YORK, Plaintiff,

against

CHARLES GERCHARIO, MICHAEL LONG, and 11 others;
Defendants

NOTICE OF APPEAL TO THE COURT OF SPECIAL SESSIONS, APPELLATE PART, FIRST DEPARTMENT

SIRS:

Please take notice that the defendants herein appeal to the Appellate Part of the Court of Special Sessions held in and for the First Judicial Department from the judgment convicting each of them of a violation of Section 124 of Traffic Regulations adopted by the Police Commissioner of the City of New York, and sentencing each of them to a fine of $5 rendered in the Magistrate's Court of the City of New York, Traffic Court, Borough of Manhattan, By Hon. Raphael A. Koenig, on the 28th day of March, 1946.

The grounds for taking this appeal are as follows:

1. That the acts proved by the People did not as a matter of law or of fact constitute a violation of said §124.

[fol. 8] 2. That said §124, correctly interpreted, permits the carrying of business notices upon the business delivery vehicles (described in the information) operated by the defendants in the course of their regular employment in that such vehicles were engaged in the usual business or regular business of the defendants' employer and were not used merely or mainly for advertising.

3. That under the construction put upon said §124 by the Magistrate it is arbitrary, unreasonable and void and exceeds the powers delegated by the State of New York to the City and the Police Commissioner.

4. That under the construction put upon said §124 by the Magistrate it violates the rights of the defendants under the Fourteenth Amendment of the United States Constitution and Article I, Section 6, of the Constitution of the State of New York.

5. That the business delivery vehicles operated by the defendants (including those described in the information) using the streets of the City of New York preponderantly carry goods in interstate commerce and that the construction of said §124 by the Magistrate constitutes an undue burden upon interstate commerce and exceeds the police power of the City of New York.

6. That under the construction put upon said §124 by the Magistrate it deprives the defendants of the equal protection of the laws in violation of the Fourteenth Amend-
[fol. 9] ment of the United States Constitution and Article I, Section 11 of the Constitution of the State of New York.

7. That if said §124 was correctly interpreted by the Magistrate to deprive defendants' employer of revenue from carrying the business notices of others on the delivery vehicles operated by the defendants while such vehicles and the defendants were engaged in the usual business or regular work of their employer and not used merely or mainly for advertising, the Police Commissioner of the City of New York in promulgating said §124 has exceeded the powers granted to him by §435 of the Charter of the City of New York.

8. That the Magistrate erred in refusing to grant defendants' motion to dismiss on the law at the close of the People's case.

9. That the Magistrate erred in excluding evidence tendered by the defendants as shown by the stenographic transcript.

10. That the Magistrate erred in convicting the defendants of a violation of said §124.

[fol. 10] Dated, April 12, 1946.

Davis, Polk, Wardwell, Sunderland & Kiendl, Attorneys for Defendants, Office and Post Office Address: 15 Broad Street, New York 5, New York.

To:

The Clerk of the Appellate Part of the Court of Special Sessions.

The Chief City Magistrate.

The Chief Clerk of the Magistrate's Court.

The District Attorney, New York County.
The Corporation Counsel of the City of New York.
The Clerk of the Traffic Court, 455 West 151st Street, Borough of Manhattan, New York, N. Y.

[fol. 11] IN CITY MAGISTRATES' COURT, CITY OF NEW YORK

TRAFFIC DISTRICT BOROUGH OF MANHATTAN, COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

vs.

RAILWAY EXPRESS AGENCY, INC.

MAGISTRATES RETURN ON APPEAL

[fol. 1] Officer George W. Horner.

Violation of Article 9, Section 124, of the Traffic Regulations of the City of New York, under Section 435 of the Charter.

Railway Express Agency, Inc.

Morris Rothenberg,

Return is herewith made to appeal taken on the 30th day of July, 1945, from the judgment of conviction in the above entitled case.

The defendant was arraigned before me at the Traffic Court, Borough of Manhattan, on the 29th day of June, 1945, on the affidavit and complaint of George W. Horner, a member of the Police Department of the City of New York, assigned to Traffic D, charging the defendant with violation of Art. 9, Sec. 124, of the Traffic Regulations of the City of New York, under Sec. 435 of the Charter, which reads as follows:

> "Section 124. Advertising Vehicles. No person shall operate, or cause to be operated, in or upon any street an advertising vehicle; provided that nothing herein contained shall prevent the putting of business notices upon business delivery vehicles, so long as such vehicles are engaged in the usual business or regular work of

the owner and not used merely or mainly for advertising."

[fol. 13] The complainant states in his complaint,

1. That on the 2nd day of May, 1945, the defendant Railway Express Agency, Inc., did violate Article 9, Section 124, of the Traffic Regulations, adopted by the Police Commissioner of the City of New York, under authority of Section 435 of the New York City Charter, in that the defendant, as owner of a certain motor vehicle bearing license No. 290413, N. Y., did cause and permit such vehicle to be operated as an advertising vehicle upon the streets of the City of New York, to wit, at or near 152 East 34th Street, Borough of Manhattan, City of New York, at or about 12:30 P. M., which was driven by one Christopher Dunn, an employee of the defendant engaged in its business; that said truck had on one side thereof a sign advertising Ringling Bros. & Barnum & Bailey Circus, which sign was approximately 4 feet by 10 feet, and on the other side had a sign advertising the motion picture "Without Love", which sign was approximately 4 feet by 10 feet, and that neither sign was a business notice of the defendant but represented advertising in no way pertaining to defendant's business.

2. That on the 2nd day of May, 1945, the defendant Railway Express Agency, Inc., did violate Article 9, Section 124, of the Traffic Regulations, adopted by the Police Commissioner of the City of New York, under authority of Section 435 of the New York City Charter, in that the defendant, as owner of a certain motor vehicle bearing license No. 290,855, N. Y., did cause and permit such vehicle to be [fol. 14] operated as an advertising vehicle upon the streets of the City of New York, to wit, at or near 140 East 43rd Street, Borough of Manhattan, City of New York, at or about 1:15 P. M., which was driven by one Joseph Buckley, an employee of the defendant engaged in its business; that said truck had on one side thereof a sign advertising Camel Cigarettes, which sign was approximately 3 feet by 7 feet, and on the other side had a sign advertising Ringling Bros. & Barnum & Bailey Circus, which sign was approximately 3 feet by 7 feet; and that neither sign was a business notice of the defendant but represented advertising in no way pertaining to defendant's business.

3. That on the 2nd day of May, 1945, the defendant Railway Express Agency, Inc., did violate Article 9, Section 124, of the Traffic Regulations, adopted by the Police Commissioner of the City of New York, under authority of Section 435 of the New York City Charter, in that the defendant, as owner of a certain motor vehicle bearing license No. 291146, N. Y., did cause and permit such vehicle to be operated as an advertising vehicle upon the streets of the City of New York, to wit, at or near 316 East 23rd Street, Borough of Manhattan, City of New York, at or about 1:30 P. M., which was driven by one Harry Hanlon, an employee of the defendant engaged in its business; that said truck had on one side thereof a sign advertising Radio Station WOR, which sign was approximately 4 feet by 10 feet, and on the other side had a sign advertising Ringling Bros. & Barnum & Bailey Circus, which sign was approximately 4 feet by 10 feet, and that neither sign was a business [fol. 15] notice of the defendant but represented advertising in no way pertaining to defendant's business. The defendant was charged with three violations of law.

The defendant, upon arraignment, was informed by the Court of the charge against it and of its rights and privileges under the law. The defendant was represented by Davis, Polk, Wardwell, Sunderland & Kiendl, Esqs., by Ralph M. Carson, Esq., of counsel. The defendant, through its attorney entered a plea of not guilty.

Officer George W. Horner, the complaining witness, testified on behalf of the People and Detectives Joseph V. Prefer, who accompanied Officer George W. Horner, also appeared as a witness on behalf of the People, but on request of the counsel for the People, the counsel for the defendant conceded that Detective Prefer would testify to the same facts and the same things that Officer Horner had testified to, and to save the time of the Court Detective Prefer did not testify. At the conclusion of the People's case counsel for the defendant made a motion to dismiss on the law, but the Court did deny the motion. Witnesses Eliphalet R. Merry, Jr., August Wilkoe, Joseph Buckley, Christopher Dunn, John R. Mara, Harry Hanlon and Otto Brachhold testified on behalf of the defendant. At the conclusion of the testimony of the witnesses, counsel for the defendant requested a few days to submit brief. The Court asked counsel for both sides to submit briefs and adjourned the

case to July 2, 1945, at the Jefferson Market Court, Borough of Manhattan.

[fol. 16]

Briefs were submitted by counsel for both sides and the case came before me for decision on July 2, 1945 at the Jefferson Market Court, Borough of Manhattan. The Court did find the defendant guilty and imposed a fine of $25, which fine was paid under protest by the defendant.

From all the evidence adduced at the trial of this defendant I was convinced beyond a doubt that it was guilty of the offense as charged in the complaint.

Copy of the affidavit and complaint, together with the minutes as taken by the official stenographer, are herewith attached and made a part of this return, all of which is respectfully submitted.

Morris Rothenberg, City Magistrate.

November 16, 1945.

[fol. 17] In City Magistrates' Court, City of New York

Traffic District, Borough of Manhattan, County of New York

The People of the State of New York

vs.

Charles Gercharlo, Michael Long, and 11 others

Magistrates Return on Appeal—

[fol. 18]

Different Police Officers. Violation of Article 9, Section 124 of the Traffic Regulations.

Charles Gercharlo, Michael Long, and 11 others.

Raphael Koenig.

Return is herewith made to an appeal taken on the 16th day of April, 1946 in the above entitled case.

The defendants, Emil Hugo Miller, Charles Arthur Harrington, Frank Reilly, Howard Broems, Edward Halloran, Thomas McCabe, Milton Mulhare, Jeremiah McCarthy, Michael Long, George Bauer, Charles Gerachio, Herman

Gipes and John Murray appeared before the Honorable Anna M. Kross on the 2nd day of January, 1945, at the Traffic Court, Borough of Manhattan, on thirteen complaints, for violation of Article 9, Section 124, of the Traffic Regulations adopted by Police Commissioner under authority of Section 435, New York City Charter, that prohibits Advertising of Vehicles, as stated in affidavits and complaints herewith attached.

The defendants upon their arraignment were informed by the Court of the charges against them and of their rights and privileges under the law. The defendants each entered a plea of not guilty and after several adjournments the defendants appeared before me for trial on [fol. 19] February 28th, 1946 and were represented by Davis, Polk, Wardwell, Sunderland & Kiendl, Esqs., by Ralph M. Carson, Esq. of Counsel. It was agreed by both the prosecution and the defense to try the thirteen defendants as one and that separate judgments be rendered.

Briefs were prepared by the Corporation Counsel and Counsel for the defense and submitted to the Court in advance of the presentation of the evidence.

It was stipulated that the trucks were in operation by the corporation, driven by these defendants and had on the side signs enumerated by the police officers and were also engaged in the business of the corporation, and it was conceded by counsel for the defense that the officers in these cases, if called to testify, would testify that on December 28th, 1944, in front of the different premises located within the City and County of New York, they saw trucks of the Railway Express Agency, Inc., driven by the respective defendants in these cases, and that each of these trucks carried signs on the exterior of the vehicles, displaying things other than Railway Express Agency, Inc.

The Court then informed counsel for each side that after reading the briefs submitted they would be notified when to appear, and the case was adjourned without any particular date being set, the Magistrate to notify both sides.

On March 28th, 1946 the defendants appeared before me for sentence and the defendants were represented by Davis, Polk, Wardwell, Sunderland & Kiendl, Esqs., by Howard S. Tuthill, Esq. of Counsel. After hearing the [fol. 20] argument of counsel the Court did find each defendant guilty and imposed a fine of five dollars in each

case, and adjourned the case to April 1st, 1946 for the payment of the fines.

From all the evidence presented to me I was convinced beyond a reasonable doubt that the defendants were each guilty of the offense as charged in the complaints.

Copies of the affidavits and complaints, together with a copy of the minutes as taken by the official stenographer are herewith attached and made a part of this return, all of which is respectfully submitted.

Raphael P. Koenig, City Magistrate.

November 1, 1946.

[fol. 21] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man.

SUMMONS

CITY OF NEW YORK,
County of New York, ss.:

DENIS F. GALLAGHER, a Patrolman of the Traffic "C" Police Department of the City of New York, being duly sworn, says, that on Dec. 28, 1944, in the County of N. Y., City of New York, the defendant Chares Gerachio, did unlawfully violate Section 124, Article 9, of Traffic Regulations, to wit: "No person shall operate, or cause to be operated, in or upon any street an advertising vehicle: provided that nothing herein contained shall prevent the putting of business notices upon business delivery vehicles, so long as such vehicles are engaged in the usual business or regular work of the owner and not used merely or mainly for advertising."

(Advertising motion pictures on side of vehicle."

in violation of Art. 9, Section 124, of the Traffic Regulations of the City of New York.

Denis F. Gallagher.

Sworn to before me Dec. 28, 1944, Lt. Wm. V. Lawlor, City Magistrate.

[fol. 22] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man.

Docket No. 634

THE PEOPLE OF THE STATE OF NEW YORK ON THE COMPLAINT OF OFFICER

vs.

CHARLES GERACHIO

Def't arraigned January 2, 1946.
Hon. —— ——, City Magistrate.
Gallagher, Officer and Shield No. —, —— ——, Traf. "C" Assignment.
The defendant on being brought before me was informed of the within charge of

Violation of Traffic Reg.

of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid [fol. 23] of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel.

—— ——, City Magistrate.

Defendant pleads Not Guilty.
Trial begun Feb. 28, 1946.
Trial concluded Mar. 28, 1946.
Deft. found Guilty, Mar. 28/46.

SENTENCE

Fined $5 or in default of payment imprisonment not to exceed 2 days in City Prison. Apr. 2 to pay. Committed to City Prison or Workhouse for —— days.

Raphael Koenig, City Magistrate.

I hereby certify that the within is a True Copy of the record on file.
New York, 4/5, 1946.

Edward F. Duffy, Jr., Clerk.

Fine Paid. Date: Apr. 1, 1946. Amount $5.00.

[fol. 24] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man.

SUMMONS

CITY OF NEW YORK,
County of New York, ss.:

DENIS F. GALLAGHER, a Patroman of the Traffic "C" Police Department of the City of New York, being duly sworn, says, that on Dec. 28, 1944, in the County of N. Y., City of New York, the defendant Michael Long did unlawfully Advertise Motion Pictures on said of vehicle in violation of Art. 9, Sec. 124, Traffic Regulations, "No person shall operate or cause to be operated, in or upon any street an advertising vehicle; provided that nothing herein contained shall prevent the putting of business notices upon business delivery vehicles, so long as such vehicles are engaged in the usual business or regular work of the owner and not used merely or mainly for advertising." in violation of Art. 9, Section 124, of the Traffic Regulations of the City of New York.

Lt. William V. Lawlor.

Sworn to before me, Dec. 28, 1944, —— ——, City Magistrate.

[fol. 25] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man.

Docket No. 632

THE PEOPLE OF THE STATE OF NEW YORK ON THE COMPLAINT OF OFFICER

VS.

MICHAEL LONG

Def't arraigned Jan. 2, 1945.

Hon. —— ——, City Magistrate.

Gallagher, Traf C, Officer and Shield No. —, —— ——, Assignment.

The defendant on being brought before me was informed of the within charge of

of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid [fol. 26] of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel.

——— ——, City Magistrate.

Defendant pleads Not Guilty.
Trial Begun Feb 28/1946.
Trial concluded Mar 28, 1946.
Deft. found Guilty.

SENTENCE

Fined $5 or in default of payment imprisonment not to exceed 2 day in City Prison. Apr 2 to pay. Committed to City Prison or Workhouse for — days.

Raphael Koenig, City Magistrate.

I hereby certify that the within is a True Copy of the record on file.
New York, 4/5 1946.

Edward F Duffy Jr, Clerk.

Fine paid. Amount $5.00.
Date Apr. 1, 1946.

[fol. 27] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man.

SUMMONS

CITY OF NEW YORK,
County of N. Y., ss.:

ANDREW BENGSTON a Ptl of the Tra "C" Department of the City of New York, being duly sworn, says, that on Dec. 28, 1944, in the County of N Y, City of New York, the defendant Thomas McCabe did unlawfully operate a motor vehicles on 30th St. bet. Mad. Ave. and 4 Ave., displaying not directly connected with their business,
in violation of Art. 9, Part. 124, of the Traffic Reg. of the City of New York.

Andrew Bengston.

Sworn to before me, Dec. 28 1944, Lt. Ben Brady, 15 Pct.

— ——, City Magistrate.

[fol. 28] City Magistrates' Court of the City of New York

Traffic Court, Borough of Man.

Docket No. 629

The People of the State of New York on the Complaint of Ptl. Andrew Bengston

vs.

Thomas McCabe

Def't arraigned Jan. 2, 1945.

Hon. ——, City Magistrate.

Ptl. Bengston, Officer and Shield No. —, Tr "C", ——, Assignment.

The defendant on being brought before me was informed of the within charge of

Violation of Administrative Code

of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid [fol. 29] of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel.

——, City Magistrate.

Defendant pleads Not Guilty.
Trial begun Feb. 28, 1946.
Trial concluded Mar. 28, 1946.
Deft. found Guilty Mar. 28/46.

Sentence

Fined $5 or in default of payment imprisonment not to exceed 2 day in City Prison. Committed to City Prison or Workhouse for — days. Apr. 2 to pay.

Ralphael Koenig, City Magistrate.

I hereby certify that the within is a True Copy of the record on file.

New York, 4 5 1946.

Edward F. Duffy Jr, Clerk.

Fine Paid. Amount $5.00.
Date Apr 1 46.

[fol. 30] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man.

SUMMONS

CITY OF NEW YORK,
County of New York, ss.:

ANDREW BENGSTON, a Ptl. of the Tfc "C" Department of the City of New York, being duly sworn, says, that on Dec. 28, 1944, in the County of N Y, City of New York, the defendant Milton Mulhare did unlawfully display advertisement signs not directly connected with their business in front of 103 E. 29th St. in violation of Art. 9, Section 124, of the Traffic Reg. of the City of New York.

Andrew Bengston.

Sworn to before me, Dec. 28, 1944. Lt. Ben Brady, 15th Pct.

—— ——, City Magistrate.

[fol. 31] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man.

Docket No. 630

THE PEOPLE OF THE STATE OF NEW YORK ON THE COMPLAINT OF PTL. ANDREW BENGSTON

vs.

MILTON MULHARE

Def't arraigned Jan. 2, 1945.

Hon. —— ——, City Magistrate.

Bengston, Officer and Shield No. —, Traf "C", —— ——, Assignment.

The defendant on being brought before me was informed of the within charge of

Violation of Traf. Reg.

of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid [fol. 32] of counsel at every stage of the proceedings and

before any further proceedings and of his right to an adjournment to procure counsel.

——— ———, City Magistrate.

Defendant pleads Not Guilty
Trial begun Feb 28, 1946.
Trial concluded Mar. 28, 1946.
Deft. found Guilty.

SENTENCE

Fined $5 or in default of payment imprisonment not to exceed 2 day in City Prison. Committed to City Prison or Workhouse for — days. Apr 2 to pay.

Raphael Koenig, City Magistrate.

I hereby certify that the within is a True Copy of the record on file.
New York, 4 5 1946.

Edward F Duffy Jr, Clerk.

Fine Paid. Amount $5.00.
Date Apr 1 46.

[fol. 33] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man.

SUMMONS

CITY OF NEW YORK,
County of New York, ss.:

ANDREW BENGSTON a Ptl of the Trf "C" Department of the City of New York, being duly sworn, says, that on Dec. 28 1944, in the County of N Y, City of New York, the defendant Jeremiah McCarty did unlawfully Display advertisement signs not directly connected with their business in front of 5 E 29 St N Y City

in violation of Art 9, Section 124, of the Traffic Reg. of the City of New York.

Andrew Bengston.

Sworn to before me, Dec. 28, 1944. Lt. Ben Brady, 15th Pct.

——— ———, City Magistrate.

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[fol. 34] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man.

Docket No. 631

THE PEOPLE OF THE STATE OF NEW YORK ON THE COMPLAINT OF ——

vs.

JEREMIAH McCARTY

Def't arraigned Jan. 2, 1945.

Hon. —— ——, City Magistrate.

—— ——, Officer and Shield No. —, —— ——, Assignment.

The defendant on being brought before me was informed of the within charge of

Violation of Traf: Reg.

of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid [fol. 35] of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel.

—— ——, City Magistrate.

Defendant pleads Not Guilty.
Trial begun Feb 28, 1946.
Trial concluded Mar. 28, 1946.
Deft. found Guilty.

SENTENCE

Fined $5 or in default of payment imprisonment not to exceed 2 day in City Prison. Committed to City Prison or Workhouse for — days. Apr. 2 to pay.

Raphael Koenig, City Magistrate.

I hereby certify that the within is a True Copy of the record on file.
New York, 4/5/1946.

Edward F Duffy Jr, Clerk.

Fine Paid. Amount $5.00
Date Apr 1 '46.

[fol. 36] City Magistrates' Court of the City of New York

Man. Traffic Court, Borough of Manhattan

Summons

City of New York,
County of N. Y., ss.:

Dennis F. Gallagher a patrolman of the Traffic C Police Department of the City of New York, being duly sworn, says, that on Dec. 28, 1944, in the County of N. Y., City of New York, the defendant George Bauer did unlawfully Advertise Motion Pictures on side of vehicle in violation of Art. 9, Sec. 124, Traffic Regulations, "No person shall operate or cause to be operated, in or upon any street an advertising vehicle; provided that nothing herein contained shall prevent the putting of business notices upon business delivery vehicles, so long as such vehicles are engaged in the usual business or regular work of the owner and not used merely or mainly for advertising."

in violation of At. 9, Section 124, of the Traffic Regulations of the City of New York.

Dennis F. Gallagher.

Sworn to before me, Dec. 28, 1944. Lt. Wm. Lawlor.
—— —— City Magistrate.

[fol. 37] City Magistrate's Court of the City of New York

Man. Traf. Court, Borough of Man.

Docket No. 633

The People of the State of New York on the Complaint of Officer

vs.

George Bauer

Def't arraigned Ret. Jan. 2, 1945.
Hon. —— ——, City Magistrate.

Gallagher, Traf. C., Officer and Shield No. —, Assignment.

The defendant on being brought before me was informed of the within charge of violation of traffic regulations of

his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid of [fol. 38] counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel.

——— ———, City Magistrate.

Defendant pleads Not Guilty.
Trial begun Feb. 28/1946.
Trial concluded Mar. 28, 1946.
Deft. found guilty.

SENTENCE

Fined $5 or in default of payment imprisonment not to exceed — day — in City Prison. April 2 to pay. Committed to City Prison or Workhouse for — days.

Raphael Koenig, City Magistrate.

I hereby certify that the within is a True Copy of the record on file.
New York, 4/5 1946.

Edward F. Duffy, Jr., Clerk.

Fine paid, amount $5.00.
Date Apr. 1/46.

[fol. 39] CITY MAGISTRATE'S COURT OF THE CITY OF NEW YORK

Man. Court, Borough of Man.

Summons

CITY OF NEW YORK,
County of N. Y., ss.:

JOHN MCCARTHY a patrolman of the Police Department of the City of New York, being duly sworn, says, that on Dec. 28, 1944, in the County of N. Y., City of New York, the defendant Herman Gipes did unlawfully operate a motor vehicle (truck) on West End Avenue and 72nd St. with two paper signs about 5 feet by 4 feet on truck, in violation of article 9, Section 124 of the Police Traffic Reg.

(Prince Albert)

in violation of Article 9, Section 124, of the Administrative Code of the City of New York.

John McCarthy.

Sworn to before me Dec. 28, 1944. George W. Roman, Lt.

——— ———, City Magistrate.

[fol. 40] City Magistrate's Court of the City of New York

Man. Court, Borough of Man.

Docket No. 642

The People of the State of New York on the Complaint of Officer

vs.

Herman Gipes

Def't arraigned Jan. 2, 1944.
Hon. ———, ———, City Magistrate.
McCarthy, Officer and Shield No. E, Assignment.

The defendant on being brought before me was informed of the within charge of violation of administrative code of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid [fol. 41] of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel.

——— ———, City Magistrate.

Defendant pleads Not Guilty.
Trial begun Feb. 28/46.
Date trial concluded 2/38, 1946.
Defendant found guilty.

SENTENCE

Fined $5 or in default of payment imprisonment not to exceed 2 day — in City Prison. April 2 to pay. Committed to City Prison or Workhouse for — days.

Raphael Koenig, City Magistrate.

I hereby certify that the within is a True Copy of the record on file.

New York, 4/5 1946.

Edward F. Duffy, Jr., Clerk.

Fine Paid. Amount $5.00.
Date Apr. 1, 1946.

[fol. 42] CITY MAGISTRATE'S COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man.

SUMMONS

CITY OF NEW YORK,
County of New York, ss.:

JOHN MCCARTHY a patrolman of the Police Department of the City of New York, being duly sworn, says, that on Dec. 28, 1944, in the County of N. Y., City of New York, the defendant John Murry did unlawfully operate a motor vehicle (truck) on West End Avenue and 65th St. with two paper signs about 5 feet by 4 feet on truck Advertising Prince Albert.

In violation of Article 9, Section 124, Police Traffic Reg.

Women the Waves need you.

in violation of Article 9, Section 124, of the Administrative Code of the City of New York.

John McCarthy.

Sworn to before me Dec. 28, 1945. George W. Roman, Lt.

—— ——, City Magistrate.

[fol. 43] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Man. Court, Borough of Man.

Docket No. 643

THE PEOPLE OF THE STATE OF NEW YORK ON THE COMPLAINT OF OFFICER

vs.

John Murry

Def't arraigned Jan. 2, 1945.
Hon. —— ——, City Magistrate.
McCarthy, Officer and Shield No. —, Assignment.

The defendant on being brought before me was informed of the within charge of

Violation of Administrative Code

of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid [fol. 44] of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel.

—— ——, City Magistrate.

Defendant pleads Not Guilty.
Tried Feb. 28/46. Found Guilty.
Date Mar. 28, 1946.

SENTENCE

Fined $5 or in default of payment imprisonment not to exceed 2 days in City Prison. Committed to City Prison or Workhouse for — days. Apr. 2 to pay.

Raphael Koenig, City Magistrate.

I hereby certify that the within is a True Copy of the record on file.
New York, 4/5 1946.

Edward F. Duffy, Jr., Clerk.

Fine Paid. Amount $5.00.
Date Apr. 1, 1946.

[fol. 45] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Manhattan Traffic Court, Borough of Manhattan

SUMMONS

CITY OF NEW YORK,
County of N. Y., ss.:

PTL. GEORGE A. LIEDVOGEL, a Patrolman of the 1st District Traffic Department of the City of New York, being duly sworn, says, that on December 28, 1944, in the County of New York, City of New York, the defendant Howard Broems, 32-56 41st St., L. I. C., chauffeur for Railway Express Agency, 218 East 44 St., N. Y. C. did unlawfully violation Article 9, Section 124, of the Traffic Regulations adopted by Police Commissioner under authority of Sec. 435, New York City Charter, Advertisement of Vehicles, No person shall operate, or cause to be operated, in or upon any street, an advertising vehicles, provides that nothing herein contained shall prevent the putting of business notices upon business delivery vehicles, so long as such vehicles are engaged in the usual business or regular work of the owner and not used merely or mainly for advertising.

in violation of Art. 9, Section 124, of the Administrative Code of the City of New York.

Ptl. George A. Liedvogel.

Sworn to before me Dec. 28, 1944. Lt. William V. Lawlor.

—— ——, City Magistrate.

[fol. 46] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK
MANHATTAN COURT, BOROUGH OF MAN.

Docket 626

THE PEOPLE OF THE STATE OF NEW YORK

on the Complaint of

PTL. GEORGE A. LIEDVOGEL

vs.

HOWARD BROEMS

Def't arraigned January 2, 1944
Hon. —— ——, City Magistrate.
Ptl. George A. Liedvogel, Officer and Shield No. —, 1st D. T.
—— ——, Assignment.
The defendant on being brought before me was informed of the within charge of

Violation of Administrative Code

of his right to communicate with relatives or friends by letter of telephone, free of charge, or his right to the aid [fol. 47] of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel.

—— ——, City Magistrate.

Defendant pleads Not Guilty
Trial begun Feb. 28, 1946
Trial concluded Mar. 28, 1946
Defendant found guilty.

SENTENCE

Fined $5 or in default of payment imprisonment not to exceed 2 days in City Prison. April 2 to pay. Committed to City Prison or Workhouse for — days.

Raphael Koenig, City Magistrate.

I hereby certify that the within is a True Copy of the record on file.
New York, 4/5 1946

Edward F. Duffy, Jr., Clerk.

Fine Paid. Amount $5.00.
Date Apr. 1/46.

[fol. 48] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man

SUMMONS

CITY OF NEW YORK,
County of New York, ss:

Ptl. George A. Liedvogel, a Patrolman of the 1st District Traffic Department of the City of New York, being duly sworn, says, that on December 28, 1944, in the County of New York, City of New York, the defendant Frank Reilly, 321 E. 79th St., N. Y. C., chauffeur for Railway Express Agency, 219 E. 42nd St., N. Y. C., did unlawfully violate Art. 9, Sec. 124, of the Traffic Regulations adopted by Police Commissioner under authority of Section 435, New York City Charter.

Advertising of Vehicles

No person shall operate or cause to be operated in or upon any street an advertising vehicle, provided that nothing herein contained shall prevent the putting of business notices upon business delivery vehicles, so long as such vehicles are engaged in the usual business or regular work of the owner and not used merely or mainly for advertising. in violation of Art. 9, Section 124, of the Administrative Code of the City of New York.

Ptl. George A. Liedvogel.

Sworn to before me December 28, 1944. Lt. William V. Lawlor.

——— ———, City Magistrate.

[fol. 49] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man.

Docket No. 625

THE PEOPLE OF THE STATE OF NEW YORK

on the Complaint of

PTL. GEORGE A. LIEDVOGEL

vs.

FREDERICK REILLY

Def't arraigned January 2, 1946

Hon. —— ——, City Magistrate.

Ptl. George A. Liedvogel, Officer and Shield No. —, I. D. T.

—— ——, Assignment.

The defendant on being brought before me was informed of the within charge of

Violation of Traffic Reg.

of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid [fol. 50] of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel.

—— ——, City Magistrate.

Defendant pleads Not Guilty.

Trial begun Feb. 28, 1946.

Trial concluded Mar. 28, 1946.

Deft. found Guilty Mar. 28/46.

SENTENCE

Fined $5. or in default of payment imprisonment not to exceed 2 days in City Prison. Apr. 2 to pay. Committed to City Prison or Workhouse for — days.

Raphael Koenig, City Magistrate.

I hereby certify that the within is a True Copy of the record on file.

Edward F. Duffy, Jr., Clerk.

New York, 4/1946.
Fine Paid. Amount $5.00.
Date Apr. 1, 1946.

[fol. 51] City Magistrates' Court of the City of New York

Man. Traffic Court, Borough of Man.

Summons

City of New York,
County of New York, ss.:

Ptl. George A. Liedvogel, a Patrolman of the 1st District Traffic Department of the City of New York, being duly sworn, says, that on December 28, 1944, in the County of New York, City of New York, the defendant Charles Arthur Harrington, 1136 Clay Ave., N. Y. C., chauffeur for Railway Express Agency, 219 East 42nd Street, N. Y. C. did unlawfully violate Article 9, Section 124 of the Traffic Regulations adopted by Police Commissioner under authority of Section 435, New York City Charter

Advertising of Vehicles

No person shall operate or cause to be operated in or upon any street, an advertising vehicles, provided that nothing herein contained shall prevent the putting of business notices upon business delivery vehicles, so long as such vehicles are engaged in the usual business or regular work of the owner and not used merely or mainly for advertising.

in violation of Art. 9, Section 124 of the Administrative Code of the City of New York.

Ptl. George A. Liedvogel.

Sworn to before me December 28, 1944, —— ——,
City Magistrate.

[fol. 52] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man.

Docket No. 624

424-606 NY

THE PEOPLE OF THE STATE OF NEW YORK ON THE COMPLAINT OF PTL. GEORGE A. LIEDVOGEL

vs.

CHARLES ARTHUR HARRINGTON

Def't arraigned Jan. 2, 1945.
Hon. —— ——, City Magistrate.
Ptl. George A. Liedvogel, Officer and Shield No. — 1st D. T., —— ——, Assignment.

The defendant on being brought before me was informed of the within charge of

Violation of Administrative Code

of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid [fol. 53] of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel.

—— ——, City Magistrate.

Defendant pleads Not Guilty.
Trial begin Feb. 28/46.
Trial concluded Mar. 28, 1946.
Defendant found guilty.

SENTENCE

Fined $5 or in default of payment imprisonment not to exceed 2 days in City Prison. April 2 to pay. Committed to City Prison or Workhouse for — days.

—— ——, City Magistrate.

I hereby certify that the within is a True Copy of the record on file.
New York, 4/5 1946.

Edward F. Duffy, Jr., Clerk.

Fine Paid. Amount $5.00.
Date Apr. 1/46.

[fol. 54] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man.

SUMMONS

CITY OF NEW YORK,
County of New York, ss.:

ANDREW BENGSTON, a Ptl. of the Tr "C" Department of the City of New York, being duly sworn, says, that on Dec. 28, 1944, in the County of N. Y., City of New York, the defendant Edward Halloran did unlawfully Display advertisement signs, not directly connected with their business in front of 22 E. 29th St., N. Y. City, in violation of Art. #9, Par. 124

in violation of Art. 9, Par. 124, of the Traffic Reg. of the City of New York.

Andrew Bengston.

Sworn to before me Dec. 24, 1944. Lt. Ben Brady, 15 Pct.

—— ——, City Magistrate.

[fol. 55] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man.

Docket No. 628

THE PEOPLE OF THE STATE OF NEW YORK ON THE COMPLAINT OF PTL. ANDREW BENGSTON

vs.

EDWARD HOLLORAN

Def't arraigned Jan. 2, 1945.
Hon. —— ——, City Magistrate.
Bengston, Traf C, Officer and Shield No. —, —— ——, Assignment.
The defendant on being brought before me was informed of the within charge of

of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid [fol. 56] of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel.

——— ———, City Magistrate.

Defendant pleads Not Guilty.

Trial begun Feb. 28/1946.

Trial concluded Mar. 28, 1946.

Deft. found Guilty Mar. 28/1946.

SENTENCE

Fined $5 or in default of payment imprisonment not to exceed 2 day- in City Prison. Apr. 2 to pay. Committed to City Prison or Workhouse for — days.

Raphael Koenig, City Magistrate.

I hereby certify that the within is a True Copy of the record on file.

New York, 4/5, 1946.

Edward F. Duffy, Jr., Clerk.

Fine Paid. Amount $5.00.

Date Apr. 1, 1946.

[fol. 57] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court, Borough of Man.

SUMMONS

CITY OF NEW YORK,
County of New York, ss.:

PTL. GEORGE A. LIEDVOGEL, a Patrolman of the 1st District Traffic Department of the City of New York, being duly sworn, says, that on December 28, 1944, in the County of New York, City of New York, the defendant Emil Hugo Miller, 506 E. 5th St., N. Y. C., chauffeur for Railway Express Agency, 218 East 44th St., did unlawfully violate Article 9, Section 124, of the Traffic Regulations adopted by Police Commissioner under authority of Section 435, New York City Charter,

Advertising of Vehicles,

No person shall operate or cause to be operated, in or upon any street, an advertising vehicle, provided that nothing herein contained shall prevent the putting of business notices upon business delivery vehicles, so long as such vehicles are engaged in the usual business or regular work of the owner and not used merely or mainly for advertising.

in violation of Art. 9, Section 124, of the Administrative Code of the City of New York.

Ptl. George A. Liedvogel.

Sworn to before me December 28, 1944, Lt. William V. Lawlor, —— ——, City Magistrate.

[fol. 58] City Magistrates' Court of the City of New York

Traffic Court, Borough of Man.

Docket No. 623

The People of the State of New York on the Complaint of Ptl. George A. Liedvogel

vs.

Emil Hugo Miller

Def't arraigned Jan. 2, 1945.

Hon. —— ——, City Magistrate.

Parl. George A. Liedvogel, Officer and Shield No. —, 1st Dist. Tr., —— ——, Assignment.

The defendant on being brought before me was informed of the within charge of

Violation of Traffic Reg.

of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid [fol. 59] of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel.

—— ——, City Magistrate.

Defendant pleads Not Guilty.

Trial Begun Feb. 28/1946.

Trial concluded Mar. 28, 1946.

Deft. found Guilty.

SENTENCE

Fined $5 or in default of payment imprisonment not to exceed 2 day- in City Prison. Apr. 2 to pay. Committed to City Prison or Workhouse for — days.

Raphael Koenig, City Magistrate.

I hereby certify that the within is a True Copy of the record on file.

Edward F. Duffy, Jr., Clerk.

New York, 4/5, 1946.
Fine Paid. Amount $5.00.
Date Apr. 1, 1946.

[fol. 60] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic District, Borough of Man.

SUMMONS

(CORPORATION)

CITY OF NEW YORK,
County of New York, ss.:

In the Name of the People of the State of New York.

To Railway Express Agency, Inc., a corporation located at 230 Park Ave., Man.

You are hereby summoned to appear before me at No. 455 W. 151 Street—Manhattan Traffic Court on the 12 day of June, 1945, at 10 A. M., to answer a charge made against you upon the information of George W. Horner, Shield No. 4422 of Traffic D for viol. of Art. 9, Sec. 124, of the Traffic Regulations adopted by the Police Commissioner under Sec. 435 of the Charter of the City of N. Y. in violation of section 124 of the Traffic Regulations.

Dated at the City of New York, this 31 day of May, 1945.

Sala, City Magistrate.

[fol. 61] CITY MAGISTRATES' COURT OF THE CITY OF NEW YORK

Traffic Court: Borough of Manhattan

AFFIDAVIT OF GEORGE W. HORNER

STATE OF NEW YORK,
County of New York, ss.:

GEORGE W. HORNER, being duly sworn, deposes and says: That he is a Police Officer of the Department of Police of the City of New York and is assigned to Traffic "D"; that his shield number is 4422.

1. That on the 2nd day of May, 1945, the defendant Railway Express Agency, Inc., did violate Article 9, Section 124, of the Traffic Regulations, adopted by the Police Commissioner of the City of New York, under authority of Section 435 of the New York City Charter, in that the defendant, as owner of a certain motor vehicle bearing license No. 290413, N. Y., did cause and permit such vehicle to be operated as an advertising vehicle upon the streets of the City of New York, to wit, at or near 152 East 34th Street, Borough of Manhattan, City of New York, at or about 12:30 P. M., which was driven by one Christopher Dunn, an employee of the defendant engaged in its business; that said truck had on one side thereof a sign advertising Ringling Bros. & Barnum & Bailey Circus, which sign was approximately 4 feet by 10 feet, and on the other side had a sign advertising the motion picture "Without Love", which sign was approximately 4 feet by 10 feet, and that neither [fol. 62] sign was a business notice of the defendant but represented advertising in no way pertaining to defendant's business.

2. That on the 2nd day of May, 1945, the defendant Railway Express Agency, Inc., did violate Article 9, Section 124, of the Traffic Regulations, adopted by the Police Commissioner of the City of New York, under authority of Section 435 of the New York City Charter, in that the defendant, as owner of a certain motor vehicle bearing license No. 290855, N. Y., did cause and permit such vehicle to be operated as an advertising vehicle upon the streets of the City of New York, to wit, at or near 140 East 43rd Street, Borough of Manhattan, City of New York, at or about 1:15 P. M., which was driven by one Joseph Buckley, an em-

ployee of the defendant engaged in its business; that said truck had on one side thereof a sign advertising Camel Cigarettes, which sign was approximately 3 feet by 7 feet, and on the other side had a sign advertising Ringling Bros. & Barnum & Bailey Circus, which sign was approximately 3 feet by 7 feet; and that neither sign was a business notice of the defendant but represented advertising in no way pertaining to defendant's business.

3. That on the 2nd day of May, 1945, the defendant Railway Express Agency, Inc., did violate Article 9, Section 124, of the Traffic Regulations, adopted by the Police Commissioner of the City of New York, under authority of Section 435 of the New York City Charter, in that the defendant, as owner of a certain motor vehicle bearing [fol. 63] license No. 291146, N. Y., did cause and permit such vehicle to be operated as an advertising vehicle upon the streets of the City of New York, to wit, at or near 316 East 23rd Street, Borough of Manhattan, City of New York, at or about 1:30 P. M., which was driven by one Harry Hanlon, an employee of the defendant engaged in its business; that said truck had on one side thereof a sign advertising Radio Station WOR, which sign was approximately 4 feet by 10 feet, and on the other side had a sign advertising Ringling Bros. & Barnum & Bailey Circus, which sign was approximately 4 feet by 10 feet, and that neither sign was a business notice of the defendant but represented advertising in no way pertaining to defendant's business.

I charge the defendant with three separate violations of law as set forth in this complaint and I pray that the defendant be dealt with according to law.

Pol. Geo. W. Horner, Complainant Shield 4422 Traffic "D".

Sworn to before me this 31 day of May, 1945. Sala, City Magistrate.

[fol. 64] CITY MAGISTRATE'S COURT OF THE CITY OF NEW YORK

Traffic Court: Borough of Manhattan

PEOPLE OF THE STATE OF NEW YORK ON THE COMPLAINT OF GEORGE W. HORNER, Plaintiff,

—against—

RAILWAY EXPRESS AGENCY, INC., Defendant

ANSWER

For its answer to the summons and information in the form of the affidavit of George W. Horner, both dated May 31, 1945, defendant Railway Express Agency, Inc., by its counsel, Davis, Polk, Wardwell, Sunderland & Kiendl;

1. Denies that the acts described in the affidavit constitute a violation of the Traffic Regulations.

For a First Defense:

2. Alleges that the vehicles referred to in the affidavit were at the times referred to engaged in the usual business or regular work of Railway Express Agency, Inc., and were not used merely or mainly for advertising.

[fol. 65] For a Second Defense:

3. Alleges that, if construed to prohibit the carrying of paid advertising by the defendant on its delivery vehicles while operated in the streets of New York City in the transportation of merchandise in the usual conduct of the business of the defendant, § 124 of the Traffic Regulations is arbitrary, unreasonable and void, and exceeds the powers delegated by the State of New York to the City and to the Police Commissioner.

For the Third Defense:

4. Alleges that, if construed as set forth in paragraph 3 hereof, § 124 of the Traffic Regulations would deprive the defendant of its property without due process of law in violation of the State and Federal Constitutions.

For a Fourth Defense:

5. Alleges that the defendant, a corporation of the State of Delaware doing business in the State of New York,

employs delivery vehicles in the City of New York preponderantly in the carriage of goods in interstate commerce, and carries paid advertising on its vehicles as an incident to the carriage of goods, and that § 124 of the Traffic Regulations, if construed as set forth in paragraph 3 hereof, would exceed the police powers of the State of New York and be an unconstitutional interference with interstate commerce.

[fol. 66] Wherefore defendant demands judgment dismissing the summons and information.

Davis, Polk, Wardwell, Sunderland & Kiendl, Attorneys for Defendant, 15 Broad Street, Borough of Manhattan, City of New York 5.

(Verified on June 29, 1945.)

[fol. 67] MANHATTAN TRAFFIC COURT

City of New York—Borough of Manhattan

Docket No. 82964

PEOPLE OF THE STATE OF NEW YORK ON COMPLAINT OF GEORGE W. HORNER

against

RAILWAY EXPRESS AGENCY, INC., Defendant

Testimony

June 29, 1945

Before Hon. Morris Rothenberg, City Magistrate

Appearances:

Mr. Sylvan M. Elias, Assistant Corporation Counsel, City of New York, For the People.

Davis, Polk, Wardwell, Sunderland & Kiendl, Esqs., by Ralph M. Carson, Esq., of counsel, For the Defendant.

[fol. 68] Charge: Violation of Art. 9, Sec. 124, of the Traffic Regulations of the City of New York, Under Sec. 435 of the Charter.

(Defendant by counsel plead not guilty and ready.)

GEORGE W. HORNER, a Patrolman, attached to the Police Department of the City of New York, assigned to Traffic D, shield 4422, called as a witness on behalf of the People, after being duly sworn, testified as follows:

Mr. Elias: I first want to offer in evidence a copy of the Traffic Regulations promulgated by the Police Commissioner pursuant to his authority under Section 435 of the City Charter, certified by the Chief Clerk of the Police Department. These are the traffic regulations, and that they were published in the City Record filed with the City Clerk on September 15, 1943, Article 9, Section 124—the section involved here—had not been amended to the date of this particular certification, which was June 4, 1945.

The Court: Received in evidence and marked People's Exhibit 1. Will you read that, please.

Mr. Elias (reading): "Section 124. Advertising Vehicles. No person shall operate, or cause to be operated, in or upon any street an advertising vehicle, provided that nothing herein contained shall prevent the putting of busi-
[fol. 69] ness notices upon business delivery vehicles, so long as such vehicles are engaged in the usual business or regular work of the owner and not used merely or mainly for advertising."

STIPULATION OF FACTS

I also want to read into the record a stipulation entered into between counsel for the respective parties as follows:

It is hereby stipulated for all purposes of trial of the complaint served upon the defendant with reference to the alleged violation of Section 124 of the Traffic Regulations of the City of New York:

1. That the Railway Express Agency, Inc., a Delaware corporation, received authority to do business in the State of New York on or about January 22, 1929, and has been conducting business in this State ever since. The printed copy of the authority of Railway Express Agency, Inc., bearing the initials of counsel is an authentic copy of the original.

2. That on May 2, 1945, at or about 12:30 P. M., a motor vehicle bearing license No. 290413 New York was being operated by the defendant at or near 152 East 34th Street, Borough of Manhattan, New York City, by defendant's

employee, Christopher Dunn, with the consent of the defendant and in pursuance of its business.

3. On May 2, 1945, at or about 1:15 P. M., motor vehicle bearing license number 290855 New York was being oper-
[fol. 70] ated by the defendant at or near 140 East 43rd Street, Borough of Manhattan, New York City, by defendant's employee, Joseph Buckley, with the consent of the defendant and in pursuance of its business.

4. That on May 2, 1945, at or about 1:30 P. M., motor vehicle bearing license number 291146 New York, was being operated by the defendant at or near 316 East 23rd Street, Borough of Manhattan, New York City, by defendant's employee, Harry Hanlon, with the consent of the defendant and in pursuance of its business.

Dated, New York, June 25, 1945.

(Two sheets received in evidence and marked People's Exhibits 2-A and 2-B.)

Direct examination.

By Mr. Elias:

Q. Patrolman Horner, you are a member of the Police Department of the City of New York?

A. I am.

Q. And on May 2, 1945, at about 12:30 P. M., were you in front of premises 152 East 34th Street, New York City?

A. I was.

Q. By whom were you accompanied?

A. By Detective Prefer of the Photo Gallery.

Q. He is also a member of the Police Department of New York City?

A. Yes, sir.

Q. In front of those premises did you see a truck of the Railway Express Agency, Inc., bearing license 290413?

A. I did.

[fol. 71] Q. Did that truck have some other number on it besides the license number?

A. Yes.

Q. What is that number?

A. 2225.

Q. Did you see any signs on that truck advertising anything other than Railway Express Agency, Inc.?

A. I did.

Q. What were these signs?

A. On the right side of the truck was a sign advertising, "Ringling Brothers and Barnum and Bailey's Circus." On the left side was advertised a motion picture, "Without Love; Spencer Tracy and Katherine Hepburn; M. G. M."

Q. I show you a photograph and ask whether it is a fair representation of the truck and one of the signs advertising "Without Love"?

A. It is.

Mr. Elias: I offer it in evidence.

By the Court:

Q. Is it a fair representation of the sign on the truck on the day in question?

A. That's right.

The Court: Received in evidence.

(Marked People's Exhibit 3.)

By Mr. Elias:

Q. I show you another photograph and ask whether it is a fair representation of that same truck with the other sign on it?

A. It is.

Mr. Elias: I offer that in evidence.

[fol. 72] By the Court:

Q. On the same day?

A. On the same truck.

Q. As charged in the complaint?

A. Charged in the complaint.

The Court: Received.

(Marked People's Exhibit 4.)

By Mr. Elias:

Q. Were these signs in color?

A. They were.

Q. Did you measure these signs?

A. I measured one on 34th Street. It measured four feet by ten feet.

Q. Does that apply to both of the signs?

A. It does.

Q. Patrolman Horner, on that same day about 1:15 P. M., were you in front of premises 140 East 43rd Street, New York City?

A. I was.

Q. Did you see a truck of the Railway Express Agency, Inc., with the license 290855 New York?

A. I did.

Q. And did that truck also have another number on it?

A. It did.

Q. What was that number?

A. 20,465.

Q. Did you see any signs on that truck advertising anything other than Railway Express Agency, Inc.?

A. I did.

Q. What did you see?

A. On the right side of the truck was a commercial ad, "I'd walk a mile for a Camel." On the left side, "Ringling Brothers and Barnum and Bailey."

[fol. 73] Q. I show you a photograph and ask whether it is a fair representation of that truck with the sign on it advertising Camels?

A. It is.

Mr. Elias: I respectfully offer that in evidence.

By the Court:

Q. On the day charged?

A. On the day in question charged in the complaint.

The Court: Received.

(Marked People's Exhibit 5.)

By Mr. Elias:

Q. I show you another photograph and ask whether it is a fair representation of that same truck with the sign on the other side of it?

By the Court:

Q. On the same date?

A. On the same date.

Q. As charged in the complaint?

A. It is.

The Court: Received in evidence.

(Marked People's Exhibit 6.)

By Mr. Elias:

Q. Did you measure these signs, Patrolman Horner?

A. The one at 43rd Street, I did not. I judge it to be approximately three by seven feet.

[fol. 74] Q. Each of the signs on it?

A. On each side.

Q. Were these signs in color?

A. They were.

Q. On that same day, at or about 1:30 P. M., in front of premises 316 East 23rd Street, New York, did you see a truck of Railway Express Agency, Inc. with the license 291146 New York?

A. I did.

Q. Did that truck likewise have another number on it?

A. It did.

Q. What was the number?

A. 26568.

Q. And did you see any signs on that truck at the time advertising anything other than Railway Express Agency, Inc.?

A. I did.

Q. What did you see?

A. On the right side was "WOR, tune in 710. This is Mutual." On the left side was "Ringling Brothers and Barnum and Bailey Circus."

Q. I show you a photograph and ask whether it is a true representation of that truck on that day and at that time and place and with the sign advertising Station WOR?

A. It is.

Mr. Elias: I respectfully offer it in evidence.

The Court: Received in evidence.

(Marked People's Exhibit 7.)

Q. I show you another photograph and ask whether that is a fair representation of that same truck on that day and at that place and time showing a sign advertising Ringling Brothers and Barnum and Bailey Circus?

A. It is.

[fol. 75] Mr. Elias: I respectfully offer it in evidence.

The Court: Received.

(Marked People's Exhibit 8.)

Q. Were both of those signs likewise in color?
A. They were.
Q. Did you measure these signs?
A. No; I judge them to be approximately four by ten.

Cross-examination.

By Mr. Carson:

Q. Did you look inside of any of these three trucks to see what they carried?
A. The truck on 34th Street contained merchandise.
Q. What merchandise?
A. General merchandise.
Q. You cannot give any more particulars?
A. Well, boxes.
Q. Just boxes?
A. Boxes.
Q. How about the other two?

Mr. Elias: I object to this as incompetent, irrelevant and immaterial. The question is whether they violated the section.

The Court: I will allow it. Overruled.

The Witness: The truck on 43rd Street was closed.

Q. You did not look in?
A. No.
Q. How about the third one?
A. I did. The same kind of merchandise.

Mr. Carson: That is all.

[fol. 76] Joseph V. Prefer, a Detective, attached to the Police Department of the City of New York, assigned to the 18th Division, Photograph Gallery, Shield 1526, called as a witness on behalf of the People, after being duly sworn, testified as follows:

Direct examination.

By Mr. Elias:

Q. You have heard Patrolman Horner testify here?
A. I did.
Q. And did you accompany him on all occasions referred to?

A. I did.

Q. And are you the one who took these photographs offered in evidence?

A. Yes, sir.

Mr. Elias: If counsel for the defendant will concede that Detective Prefer would testify to the same state of facts and the same things that Patrolman Horner has testified to, I believe that we can save the time of the Court.

Mr. Carson: I so concede.

Mr. Elias: The People rest.

MOTION TO DISMISS

Mr. Carson: The defendant moves to dismiss on the law, your Honor.

The Court: Do you wish to add anything to that statement?

Mr. Carson: I am going to put in a case. I offer in evidence a copy of the certificate of incorporation of the Railway Express Agency, Incorporated, dated December 6, 1928. [fol. 77] Mr. Elias: If that is the one that has Mr. Carson's initials on it, there is no objection.

Mr. Carson: I will put my initials on it. I exclude from the offer at Mr. Elias' suggestion, a foot-note on the first page.

(Marked Defendant's Exhibit A, in evidence.)

The Court (addressing Mr. Carson): Have you finished your motion; have you concluded what you wish to say on the motion?

Mr. Carson: I merely noted my motion to dismiss on the law. I may argue it later.

The Court: Do you want a ruling on the motion now? Do you want a ruling? You better complete your argument.

Mr. Carson: I will then, your Honor. Under Section 124 there is an express provision that the defendant may put business notices upon its delivery vehicles, so long as they are engaged in the usual business or regular work of the owner and not used "merely or mainly" for advertising. Now, of course, our essential point is that these vehicles, as shown by the People's case, were used in the business of the Railway Express Agency, Inc. and were not used

"merely or mainly" for advertising. That is the substance of our argument. I would like to file a brief on it.

The Court: I will deny your motion to dismiss.

[fol. 78] THE DEFENSE

ELIPHALET REMINGTON MERRY, JR., called as a witness on behalf of the defendant, after being duly sworn, testified as follows:

Direct examination.

By the Court:

Q. What is your name?
A. Eliphalet Remington Merry, Jr.
Q. Where do you live?
A. 618 Arlington Avenue, Westfield, New Jersey.

By Mr. Carson:

Q. You are secretary of the Railway Express Agency, Inc.?
A. I am.
Q. And have been for how long?
A. Ever since it has been in existence, practically, since March 1st, anyway, 1929.
Q. Have you brought with you the minutes of the Board of Directors meeting of October 27, 1942, and January 26th, 1943, having to do with the authorization to enter into a contract for advertising?
A. I have.
Q. Will you produce them, please?
A. Do you want to see the original minutes? These are the minutes of October 27, 1942. I have copies of them here.
Q. May I see the copy?
A. Yes.
Q. Will you point out the portion of the October 27, 1942, minutes that had to do with authorization to the president to enter into advertising contracts?

[fol. 79] Mr. Elias: Objected to. I object to any testimony as to what their minutes show because there is nothing in their minutes that can authorize them to violate traffic regu-

lations of this city. Furthermore, any testimony of those minutes is absolutely incompetent, irrelevant and immaterial to the issue here.

The Court: I presume that the purpose of showing those minutes is to attempt to prove that advertising was related to the business, so that it is an exception under the traffic regulations.

Mr. Carson: That is true, your Honor. It is also a further purpose of ours to show that as distinguished from the cases which will be cited to you, this particular operation was fully authorized by the corporate charter and carried out pursuant to the direction of the Board of Directors.

The Court: The question still remains, whether despite that you have the right to do it. I will overrule the objection and allow it.

Mr. Elias: May I have a blanket objection to this line of testimony?

The Court: Yes.

The Witness (continuing): The authority is down at the bottom, typewritten part that reads: "The matter was discussed and a motion duly made and seconded and carried." [fol. 80] Mr. Carson: I offer that particular minute in evidence and ask that the book be deemed marked and ask leave to substitute a copy.

(Paper marked Defendant's Exhibit B.)

By Mr. Carson:

Q. Turn to the minutes of January 26, 1943, and point out that portion, if any, which relates to authorization to enter into advertising contracts?

A. These are the minutes of January 26, 1943, and that is a portion, "Advertising" and reads—

Mr. Carson: I offer the minutes in evidence and ask that the original be deemed marked and ask leave to substitute a copy.

The Court: Received.

(Marked Defendant's Exhibit C, in evidence.)

Q. How long has the company, by action of its Board, carried advertising on its trucks in New York?

Mr. Elias: I object on the ground it is incompetent, irrelevant and immaterial.

The Court: I will allow it.

A. Well, it goes back to about 1930, I should say.

Mr. Carson: That is all.

[fol. 81] Cross examination.

By Mr. Elias:

Q. Mr. Merry, were you the party who signed the contract relating to the advertising discussed here?

A. I did not.

Q. Are you familiar with those contracts?

A. Somewhat.

Q. Were you present at the Board of Directors meeting where these resolutions were adopted?

A. Yes, sir.

Q. Did you know at that time that there was a regulation of the traffic regulations prohibiting the advertising on vehicles?

Mr. Carson: I object to that as incompetent, irrelevant and immaterial.

The Court: I will allow it; overruled. The question is, did he know.

Mr. Carson: Mr. Elias is putting the law in his own way.

A. Did I know it? I did not know there is any, or now.

August Wilkoc, called as a witness on behalf of the defendant, after being duly sworn, testified as follows:

Direct examination.

By the Court:

Q. What is your name?

A. August Wilkoc.

Q. Where do you live?

A. 53 Lawrence Avenue, Tuckahoe, New York.

[fol. 82] By Mr. Carson:

Q. What is your present position with the Railway Express Agency?

A. Superintendent of Vehicle Division.

Q. How long have you occupied that position?

A. A little over eight years.

Q. How long have you been in the employ of the company?

A. Forty-four years.

Q. Will you tell the Court just how the trucking business of the Railway Express Agency operated in New York City?

Mr. Elias: I object. It is absolutely incompetent, irrelevant and immaterial.

The Court: It may have some bearing. I will allow it.

Q. Just describe the operations.

A. On our outbound business our vehicles pick up traffic at various shipping establishments; take them to assorting stations where it is assorted to railway heads. Thereafter they are taken to railway heads and loaded into railroad cars. On our inbound business the traffic arriving in New York City comes in on railroad cars to the rail heads. From the rail heads it is assorted to sub-stations. After arrival at the other stations it is still broken down into delivery districts and thereafter dispatched in vehicles to the various addresses of the consignees within those districts.

Q. Where are the railway heads to which trucks move?

[fol. 83] Mr. Elias: May I have a blanket objection?

The Court: Yes.

Q. Where are the rail heads to which the trucks move?

A. Four on the Jersey side of the river—Communipaw, Erie, Lackawanna, West Shore. There is one at the west side, 33rd Street and 11th Avenue; there is one at 132nd Street and St. Ann's Avenue, Bronx; there is one at Long Island City, 39th Street, off Northern Boulevard; there is one at Grand Central Station; there is one at 138th Street and North River; there is one at 60th Street right off 12th Avenue.

Q. You spoke of outbound and inbound shipments. Do I correctly understand that the goods carried in your trucks arrive from all parts of the country and are taken to all parts of the country?

A. That's right.

Q. Will you tell the Court in general what kind of merchandise, the different varieties that your trucks carry?

A. Almost anything and everything. I could outline a few of the shipments.

Q. Give us some examples.

A. There are bees, for instance; masts for ships; there are explosives, bombsights, periscopes.

Mr. Elias: Continuing the same objection.

The Court: Yes.

The Witness (continuing): Periscopes, blood plasma; movie films, airplane wings, glassware, garments, fish; stage scenery, eggs, shoes; almost everything you can think of.

[fol. 84] Q. Tobacco?

A. Tobacco, cigarettes.

Q. Do your drivers fill out performance cards representing their day's work?

A. They do.

Q. What is the nature of that record that the performance card denotes?

A. Various clocking times and the points and the work that they are engaged in during the day's performance.

Q. A regular corporate record filed where?

A. In the supervisor's office.

Q. How many supervisors are there?

A. I would say at least there are a dozen.

Q. They are all under your direction?

A. Yes, sir.

Q. I show you three performance cards in the names of C. P. Dunn, J. A. Buckley and H. Hanlon, dated May 2, 1945, and ask if those are the cards for the three drivers referred to in the complaint, with respect to the operation of their trucks that day?

A. That is correct.

Mr. Carson: I offer these three cards in evidence.

Mr. Elias: I object to that on the ground it is incompetent, irrelevant and immaterial, having no bearing upon the issue of this case, whether the section of the traffic regulations has been violated. They are merely performance cards of their three drivers.

Q. What do these cards purport to show?

A. They show the manner in which the truck operated, showed it was also loaded, showed what they carried, hours of operation.

[fol. 85] Mr. Elias: It does not show anything carried. It shows the time the deliveries were made.

The Court: I will sustain the objection.

Mr. Carson: I would like your Honor to look at them.

The Court: It is not in evidence.

Mr. Carson: May I mark them for identification.

(Cards marked Defendant's Exhibits D, E and F, for identification.)

Q. What use is made by the company of these performance cards? What purpose do they serve?

Mr. Elias: I object to it on the ground it is incompetent, irrelevant and immaterial.

The Court: Sustained.

Q. In your experience with the Railway Express Agency, do you know whether the trucks are ever driven through the streets merely for the purpose of exhibiting advertising?

Mr. Elias: I object to that on the ground it is irrelevant, incompetent and immaterial.

The Court: Sustained.

Q. Is it the practice and custom of the Railway Express Agency to send trucks through the streets empty, merely to show advertising on the side?

[fol. 86] Mr. Elias: I object on the ground it is incompetent, irrelevant and immaterial.

The Court: I will allow it.

A. No.

Q. Do you know of any case where trucks have been driven empty for that purpose?

A. I do not.

Q. Has the Railway Express Agency carried any merchandise for the circus?

A. Oh, yes.

Q. I show you the bottom of a delivery record and ask if that is an original record showing a consignment of goods for the circus?

A. That is an original delivery sheet.

Mr. Elias: I object to that as incompetent, irrelevant and immaterial; it has no bearing on this particular violation.

Mr. Carson: I offer it in evidence.
The Court: What do you refer to?
Mr. Carson: Delivery sheets.
The Court: I sustain the objection.
Mr. Carson: I offer it for identification.

(Marked Defendant's Exhibit G, for identification, two sheets.)

Q. I show you three more delivery sheets, being the original record showing consignment of merchandise by the circus.

Mr. Elias: The same objection.
The Court: I will allow that question.

A. These are original delivery sheets, representing deliveries to the Barnum and Bailey Circus.

[fol. 87] Mr. Carson: I offer them in evidence.
Mr. Elias: Same objection.
The Court: I will sustain the objection.
Mr. Carson: I offer them for identification.

(Marked Defendant's Exhibits H, I and J, for identification.)

Q. To what extent do you know, Mr. Wilkoc, does the Railway Express Agency carry merchandise for WOR?

Mr. Elias: I object.
The Court: Objection sustained.

Q. To what extent does the Railway Express Agency cover movie films?

Mr. Elias: I object.
The Court: Sustained. It is too broad a question. It does not have relevancy to this particular issue. If you want to show it was carried in this particular instance, as cited in the complaint, I will allow you to show that.

Q. Do you personally know, Mr. Wilkoc, what was carried in the three trucks on May 2nd referred to in the complaint?
A. I do not.

Mr. Carson: I do not know whether it is necessary. I note an exception to your Honor's ruling on all the excluded evidence.

[fol. 88] Cross Examination.

By Mr. Elias:

Q. About how many trucks has the Railway Express Agency, Inc., operating in the City of New York?

A. I would say a total of 1900 units.

Q. And they carry packages from one place to another in this city, is that correct?

A. Yes, sir.

Q. Do all these trucks have advertisements on the outside of them?

A. I believe they do.

Q. Do you know?

A. Yes, I think I do know.

Q. Do they?

A. Yes.

Mr. Elias: That is all.

Redirect Examination.

By Mr. Carson:

Q. What advertising do they have other than those referred to in the evidence this morning?

A. They have "Seventh War Loan."

Mr. Elias: I object to that on the ground it is incompetent, irrelevant and immaterial, as to what advertising they carried.

The Court: I will sustain the objection.

Q. For example, do they have advertising, "Red Cross"?

A. Yes.

Mr. Elias: I object to that.

The Court: I sustain the objection.

Mr. Elias: I move to strike out the answer.

The Court: Strike it out.

Q. What proportion of the 1900 trucks which you mention would you say carry shipments which either come [fol. 89] from outside the State of New York or are destined for points outside of New York?

Mr. Elias: I object.

The Court: I will allow it—if you know.

A. They carry freight in and out of the city, all used in our business.

Q. You spoke of carrying freight in and out of the city. I am directing your attention to transportation in and out of the State of New York. Would you know what proportion of shipments had to do with inter-State business?

A. Intra-State?

Q. Inter-State business, among the States?

A. I can say at least 80 per cent of the traffic is inter-State.

Q. That is to say moving outside of the State of New York?

A. Right.

Recross-Examination.

By Mr. Elias:

Q. On that day in question, you do not know what these three trucks were carrying?

A. No.

Q. You do not know where those packages came from?

A. I do not.

Q. You do not know where they were going?

A. I do not.

Q. You do not know whether those packages on that truck had their origin in New York City and were delivered in New York City, do you know?

A. I know that the majority were from out of the city.

Q. Don't you have a certain number of trucks that stay only here in New York City?

A. No.

[fol. 90] Q. Do you have any trucks used only in New York City?

A. No.

Q. I asked you before on cross examination whether you had any trucks that are confined to the City of New York and I believe your reply was "eighteen or nineteen hundred"?

Mr. Carson: I think that is a misrepresentation.

Mr. Elias: I will stand corrected if it is. I believe that is the question.

The Court: You might ask him again.

Q. How many trucks of Railway Express Agency, Inc., are used within the City of New York?

A. In the business of Railway Express Agency, Inc., about 1900 units.

By Mr. Carson:

Q. And did you understand by that that those trucks never leave New York City, these 1900?

A. They do not leave New York City.

Q. Do they ever go to the Jersey terminal?

A. They do that.

Q. Are inter-State shipments handled by Railway Express Agency separate and carried in special trucks; are they mixed up with local shipments?

A. Mixed up.

Mr. Carson: That is all.

By the Court:

Q. Do you know what the shipments were in this particular case, inter-State or city shipments?

A. I do not know definitely what was in them.

[fol. 91] Joseph Buckley, called as a witness on behalf of the defendant, and being duly sworn, testified as follows:

Direct Examination.

By the Court:

Q. What is your name?

A. Joseph Buckley.

Q. Where do you live?

A. 224 East 47th Street, New York City.

Q. What is your occupation?

A. Vehicle man, driver.

By Mr. Carson:

Q. Mr. Buckley, you are one of the drivers referred to in the complaint in this case?

A. Yes, sir.

Q. You were driving one of the Agency's trucks on May 2, 1945?

A. Yes, sir.

Q. Which carried advertising on the side?

A. Yes, sir.

Q. I show you a performance card bearing your name, (Defendant's Exhibit E, for identification), to refresh your memory, if necessary. Will you tell the Court, if you know, what merchandise your truck carried that day?

A. Yes, sir.

The Court: State that, if you know.

The Witness (continuing): It was shipments from out of the city to be delivered to consignees in New York City.

The Court: That is not the question. The question is, what merchandise was on the truck.

The Witness: Cartons.

[fol. 92] Q. Of cigarettes, you mean?

A. No; cartons of merchandise; I do not know the contents.

Q. And you say these were shipments from out of the city?

A. Yes, sir.

Q. From what point did they originate?

A. I cannot recall where they had come from. There were shipments by rail, to be delivered to consignees, on my truck, and also shipments via airplane to be delivered to consignees.

Q. Do you know whether these shipments came from the State of New York or outside of the State of New York?

A. Outside New York.

By the Court:

Q. Do you know what kind of merchandise it was?

A. No.

By Mr. Carson:

Q. You did not look in the cartons?

A. No.

Cross Examination.

By Mr. Elias:

Q. Are you present when your truck is loaded for your deliveries on a particular day?

A. Yes, sir.

Q. Do you help in loading with the truck?

A. Yes, sir.

Q. Are you told that each package comes from a certain destination?

A. I am not told, but I receive the waybill stating such.

Q. And you read those waybills?

A. Yes, sir.

Q. Every one of them?

A. I do, before each delivery.

[fol. 93] Q. Now, will you tell us where some of these packages which you carried on your truck came from on that particular day, and tell me the State? Suppose you read every one of them.

A. It is some time since I delivered them.

By the Court:

Q. This shipment that we are talking about.

A. It was from out of the State. I couldn't tell you exactly.

Q. You do not know where any of them came from?

A. No.

Redirect examination.

By Mr. Carson:

Q. When you handle a shipment on your truck, you do receive a delivery record, do you?

A. Yes, sir.

Q. Who gives you that, your supervisor or foreman?

A. Yes, sir.

Q. This gives information as to the origin of the shipment?

A. Yes, sir.

Q. And the testimony you have given this morning as to the merchandise you were carrying on May 2nd is based on your recollection of the delivery record you saw?

A. Yes, sir.

Mr. Carson: That is all.

Recross-examination.

By Mr. Elias:

Q. How many hours a day do you work?

A. Seven hours and forty minutes.

[fol. 94] Q. Do you work any overtime?

A. At times.

Q. Do you recall whether you worked overtime on May 2nd?

A. No, I do not.

Q. At the end of a day do you have any packages in your truck that are undelivered?

A. Yes, sometimes I have.

Q. Do you want the Court to believe that you read each one of these manifests of whatever you carry showing the destination?

A. Yes, sir.

By Mr. Carson:

Q. When you deliver packages is the delivery record signed by the consignee?

A. Yes, sir; each one is signed by the consignee.

Q. You are responsible for that?

A. Yes, sir.

Recross-examination.

By Mr. Elias:

Q. But you deliver only in the City of New York, don't you?

A. Yes, sir.

Q. You do not deliver outside?

A. No.

Q. All you were interested in is getting the signature of the person to whom you bring the package?

A. Yes, sir.

CHRISTOPHER P. DUNN, called as a witness on behalf of the Defendant, after being duly sworn, testified as follows:

Direct examination.

By the Court:

Q. What is your name?
A. Christopher P. Dunn.
[fol. 95] Q. Where do you live?
A. 3446—91st Street, Jackson Heights.
Q. What is your occupation?
A. Driver.

By Mr. Carson:

Q. You are one of the drivers of the trucks refered to in the complaint that carried advertising on May 2nd, 1945?
A. Yes, sir.
Q. Do you happen to remember what was the contents of your truck on that day?
A. Well, it contained only deliveries for that morning.
Q. What do you mean by that?
A. We have a pick-up in the afternoon.
Q. What was the nature of the deliveries, do you know?
A. Well, we have everything practically; it is from insurance papers to defense uniforms—military uniforms.

By the Court:

Q. You mean that you ship?
A. We deliver. We carry in the trucks, and medicines and different articles of clothing.
Q. General merchandise?
A. General merchandise.

By Mr. Carson:

Q. I hand you Defendant's Exhibit D, for identification. Is that your performance card for that day?
A. Yes, sir.
Q. Does that refresh your memory as to the contents on that particular day?

[fol. 96] The Court: Which truck?
Mr. Carson: the truck he was driving—card 2225.

Q. Is that one of the trucks referred to in the complaint?

Mr. Carson: Yes.

A. That is mine.

Q. Can you remember what particular merchandise your truck was carrying that day?

A. Well, at the time I was picked up by the officer I was delivering to March Military, 155 East 34th Street, the same thing as March Trading & Uniform Accessories. That is only one of them. We have everything—trunks, baggage.

Q. You did not have anything else that day?

A. We truck every day in the week. We have returned luggage from soldiers leaving for sea and for soldiers coming back from furlough.

Q. The shipments you were handling on May 2nd, 1945, do you recall where they originated from?

By the Court:

Q. Do you know?

A. I couldn't say that.

Q. What are you, one of the drivers?

A. Driver.

Q. Your duties are to deliver general merchandise to the consignees?

A. That's it.

Q. That is the business?

A. Yes, sir. At this time of the day, in the afternoon it is pick-up.

The Court: You concede, Counsel, that the business of the [fol. 97] defendant is that of delivering merchandise, is that right, from points—

Mr. Carson: It is a little more general business than that.

The Court: Will you describe for the record; can you make a statement which the counsel for the People will agree to? How do you describe the business of the defendant?

Mr. Carson: I cannot describe it better that described in the charter—Defendant's Exhibit A. It has the broadest powers generally, transportation; but they may own barges, railway cars, garages, buy and sell personal property; engage in any kind of moving business.

The Court: Is there an officer of the corporation here?

Mr. Carson: Yes.

The Court: Put him on the stand.

JOHN R. MARRA, called as a witness on behalf of the defendant, after being duly sworn, testified as follows:

Direct examination.

By the Court:

Q. What is your name?
A. John R. Marra.
Q. Where do you live?
A. 230 Park Avenue.
Q. What is your occupation?
A. Executive assistant.

By Mr. Carson:

Q. You are executive assistant of Railway Express Agency, Inc.?
A. That's right.
[fol. 98] Q. You verified the answer in this case?
A. Yes, sir.
Q. How long have you been in the employ of this corporation?
A. For thirty years.
Q. Before you became an executive assistant in 1943, I understand, what was your employment?
A. Well, I was attached to the president's staff as superintendent of organization.
Q. The Court has asked, what is the general nature of the business of Railway Express Agency, Inc. Will you state for the purpose of the record?

Mr. Elias: May I have an objection to this testimony, because I believe that the certificate of incorporation, which has been offered in evidence, speaks for itself.
The Court: Overruled.

The Witness: We are engaged in a nation-wide express transportation business. We have other activities in that we sell in our offices express money orders, express travelers checks. We serve the public in many ways. We help them get goods out of pawn by taking their tickets and money and securing the goods in the pawnbroker and transporting back to wherever they may be. In many cities we handle pick-up and delivery of L. C. L. in the railways.

Q. In the City of New York?

A. In the City of New York our main business is general express transportation, handling of merchandise from New York to all points of the country, and inbound from all parts of the country to New York City.

[fol. 99] By Mr. Carson:

Q. It has been testified that the company uses about 1900 trucks in New York City. Do you know yourself what the total number of its trucks is throughout the country?

A. We have about 14,500 units.

Q. What is your relationship officially to the advertising that is carried on the company's trucks? Have you anything to do with that?

A. I am the liaison man between Douglas Leigh Advertising and Railway Express Agency.

Q. What is the gross revenue annually of Express—of Railway Express Agency, approximately?

Mr. Elias: Objected to.

The Court: I will allow that.

A. Our revenue in 1944 was near the $400,000,000 mark.

Q. What was the gross revenue from advertising carried on the sides of trucks—

Mr. Elias: Objected to as incompetent, irrelevant and immaterial. There is nothing that makes it mandatory that advertising be paid for. I cannot see where it has any relevance to this case.

By the Court:

Q. Is the defendant engaged in the business of advertising?

A. Railway Express?

Q. Yes.

A. No, we are not; we have a contract with Douglas Leigh [fol. 100] Post Advertising. They have the franchise for the sale of the advertising placed on our vehicles.

Q. That is entirely apart from the transportation business?

A. Yes, sir.

Q. Your main business is transportation?

A. Yes.

Q. And you have made a contract with some firm to permit the vehicles to carry advertising?

A. We have made a contract with Douglas Leigh Post Advertising.

Q. That advertising is not necessarily related to the business of transportation?

Mr. Carson: I object to the form of your Honor's question.

The Court: I will sustain the objection.

By Mr. Carson:

Q. What was the gross revenue from advertising in New York City?

The Court: I will sustain an objection.

Q. Does the Railway Express Agency ever carry on the sides of trucks advertisements of its own business?

A. They do.

Q. Have you any corporate policy with respect to sending trucks out merely to carry ads?

Mr. Elias: I object.

The Court: I sustain the objection.

Q. Do you as an officer of the corporation know whether [fol. 101] or not trucks are ever circulated in New York City by the corporation empty merely to carry ads?

Mr. Elias: I object.

The Court: I will allow it.

A. We do not do anything of that sort. We do not move our trucks in and about the street for that purpose.

Q. Your trucks move exclusively to carry merchandise?

A. That's right.

Q. Do you know, as an officer of the corporation, whether or not the trucks of the Agency carry from time to time, off and on, the articles which are advertised on the side of the trucks?

A. I do not know that.

Q. Is that done?

A. (No answer.)

Q. Did they do so in this particular instance referred to in the complaint?

A. I am not in a position to say.

By Mr. Carson:

Q. You have no personal knowledge what was in these trucks on May 2nd?

A. No.

Q. I ask whether the Agency carried in its trucks the general merchandise advertised on the side?

A. They do.

Q. You spoke of a contract with Douglas Leigh having to do with the allotment of advertising on the sides of the trucks?

A. That is so.

Q. Does that contract operate only in New York City or all over the country?

A. That is a nation-wide contract.

[fol. 102] Cross-examination.

By Mr. Elias:

Q. Mr. Marra, when was this contract with Douglas Leigh, indicated, signed?

A. Late in December, 1942.

Q. Do you know of your own knowledge whether there was a traffic regulation in existence then prohibiting the carrying of advertising on vehicles?

Mr. Carson: Objected to as immaterial and wrong in form.

The Court: Objection sustained.

Q. How long have you been with Railway Express Agency, Inc., or its predecessors?

A. Approximately thirty years.

Q. Had you ever heard of this particular traffic regulation during the course of that time?

Mr. Carson: I object to it as immaterial. What difference does it make if the witness heard?

The Court: I will sustain the objection.

Q. Do you know what was carried on the three trucks that are involved in this instance?

A. I have no personal knowledge what was on those particular trucks.

Q. You do not know whether any of those trucks had anything on in any way related to the signs on the trucks?

A. No, I have no personal knowledge what was on the three trucks in question.

Mr. Carson: That is all.

[fol. 103] HARRY HANLON, called as a witness on behalf of the defendant, after being duly sworn, testified as follows:

Direct examination.

By the Court:

Q. What is your name?
A. Harry Hanlon.
Q. Where do you live?
A. 338 East 67th Street.
Q. What is your occupation?
A. Chauffeur.

By Mr. Carson:

Q. You are one of the drivers who operated the truck carrying the advertising on May 2nd referred to in the complaint?
A. Yes, sir.
Q. What did your truck contain that day, if you know?
A. We had a different quantity of goods; eggs, munition parts for workers at 22nd Street, and sea bags.
Q. Anything else?
A. Various packages I had of every description.
Q. Where did those shipments originate, if you know?
A. Mostly out of town—California, Washington, D. C.

Mr. Elias: No questions.

OTTO BRACHHOLD, called as a witness on behalf of the defendant, after being duly sworn, testified as follows:

Direct examination.

By the Court:

Q. What is your name?
A. Otto Brachhold.
[fol. 104] Q. Where do you live?

A. 58 Stratford Road, Brooklyn, New York.

Q. You are a photographer?

A. That's right.

By Mr. Carson:

Q. I hand you five photographs and ask you if you were present when they were taken?

A. Yes, I was.

Q. Will you state the time and place where these were taken?

A. Shall I refer to each number?

The Court: Is that on the day in question?

Mr. Carson: No.

Q. What date were they taken?

A. They were taken in the week of January 7th to 13th, 1945.

Q. What place, where?

A. On Flatbush Avenue, Brooklyn.

Mr. Elias: I object to this.

Mr. Carson: I offer in evidence these photographs of street cars carrying advertising run by the City of New York.

The Court: I sustain the objection.

Q. Are these correct representations of what you saw at that time?

Mr. Elias: I object.

A. They were.

[fol. 105] Mr. Carson: I ask that they be marked for identification.

The Court: What do you claim to be the development of them?

Mr. Carson: Official construction by the City which runs these cars of Section 124, which is our construction.

The Court: I sustain the objection.

(Exhibits marked Defendant's Exhibits K to O, for identification.)

By Mr. Carson:

Q. Have you within the last few days seen street cars in Brooklyn carrying advertising shown on these pictures?

Mr. Elias: I object

The Court: Objection sustained.

Mr. Carson: I ask your Honor to take judicial notice of the fact that the street cars are run by the Board of Transportation of the City of New York.

The Court: Suppose they are? Suppose somebody is unauthorized to do that?

Mr. Carson: That is all, your Honor.

The Court: Is that the case on both sides? Any further testimony?

Mr. Elias: Not on our part.

COLLOQUY

Mr. Carson: We would like a few days to submit our brief.

The Court: What are the points?

[fol. 106] Mr. Carson: I want to cite to your Honor the cases with reference to the construction of Section 124. The essential point is, of course, that trucks run by this company in the operation of its business to carry merchandise are not advertising vehicles, and in fact, the ordinance so says. The ordinance says to be an advertising vehicle it has to carry it merely or mainly for advertising. As I remember, there has been four different decisions.

The Court: Has there been any decision interpreting this regulation?

Mr. Elias: Yes, by the Court of Appeals, United States Supreme Court, with a slight change in beginning the words, but not the latter part. The part that holds whether it is incidental to their business, that has been interpreted by the Court of Appeals. (Fifth Avenue Coach, New York 194, New York 19; affirmed by the Supreme Court, 221 U. S.) The antecedent of this particular regulation, which was Section 79, I believe, the traffic regulations, was adjudicated in People v. Kerns, 168 Misc. 264, and I believe likewise People v. Berkowitz.

Mr. Carson: There are about four or five cases. People vs. Berkowitz, as I remember, was one in which a wagon was driven up the street, empty, carrying advertising on the side, and held to be a violation of the ordinance. An-

other case is where a union drove an empty truck around the streets and carried advertising; held a violation of the [fol. 107] ordinance. Magistrate Harris in this court with reference to the American Railway Express; that it was not in violation of this ordinance. It is referred to in an opinion of Magistrate Aurelio, who held that it was a violation of the ordinance.

Now, the Fifth Avenue Coach Company case Mr. Elias talks about went from Special Term of the Appellate Division to the Court of Appeals and the Supreme Court of the United States, in which court it was held that the coaches of the Fifth Avenue Company, running up Fifth Avenue, couldn't legally carry advertising on the side for the reason that the company had no authority, so construed by judicial construction of its charter. I want particularly to call your Honor's attention to the language of the Appellate Division in that case. All of the Judges said as a matter of construction of the ordinance itself, the Fifth Avenue advertising was not a violation, but all the courts said that the Fifth Avenue Coach couldn't get an injunction against the enforcement of the ordinance; had no standing in equity; had no power by its charter to carry advertising.

Mr. Elias: The Fifth Avenue Coach Company case, page 29, the court said: "Heretofore engaged in the transportation of passengers and at the same time running advertising wagons. The exterior advertisements carried by it are [fol. 108] not seen by its passengers; are such as can be seen in the streets of the city and Central Park where the view is not obstructed by distance." At page 30 the court continued: "The extent and detail of these advertisements when left wholly in the control of those contracting therefor would make such stages, wagons or cars now show a display of advertisements and would clearly produce congestion on the streets. It was for the express purpose of attracting and claiming attention of the people on the streets." Further, on the very point that Mr. Carson has remarked here, about the fact that it may be only incidental to their business, the court said: "The second sentence of the ordinance is part of the same paragraph. The two sentences read together show the intention of the Legislative body. It appears evidence in itself that it was not intended to refer exclusively to wagons wholly used for the display of advertisements,

business notices upon ordinary business wagons, which are not prohibited, so long as said wagons are engaged in the usual work of the business of the owner, when even such notices are prohibited on wagons used merely or mainly for advertising. General advertising for hire is by the ordinance prohibited, whether carried on wagons wholly used for advertising or in connection with the [fol. 109] ordinary or usual business in which the wagons are engaged."

(At this point the Court asked both counsels to submit briefs and adjourned the case to July 2, 1945, 12 A. M. at Jefferson Market Court, Sixth Avenue and 10th Street, New York City.)

I hereby certify that the foregoing transcript is a true and correct copy of my stenographic notes.

Samuel Danziger, Official Court Stenographer.

[fol. 110] JEFFERSON MARKET COURT

Brought Over from Traffic Court Manhattan, for Decision—July 2, 1945

Before: Mag. Morris Rothenberg.

PEOPLE ON COMPLAINT OF GEORGE W. HORNER,

vs.

RAILWAY EXPRESS AGENCY, INC.

The Charge: Violation of Traffic Regulation—Advertising.

This case was tried in the Traffic Court, Manhattan, on June 29, 1945, before Magistrate Morris Rothenberg, and adjourned for decision to the Jefferson Market Court on July 2, 1945 at 12 noon.

Appearances: For the People: Asst. Corp. Counsel Sylvan H. Elias. For the Defendant: Davis, Polk, Wardwell, Sunderland & Kiendl, by Ralph M. Carson, 15 Broad Street, New York, N. Y.

[fol. 111] The Court: Do you want to add anything to what you have submitted in your briefs?

Mr. Elias: On page 7 of my brief, I mentioned the decision in the Calfapietra case, and I mentioned that it was affirmed by the Appellate Division on April 8th.

Since that time it also has been affirmed by the Court of Appeals.

The Court: Is there anything else you want to say?

Mr. Elias: No, sir.

The Court: Do you wish to say anything?

Mr. Carson: In connection with the Corporation Counsel's remarks, I might remind Your Honor that the Court of Appeals, in a case cited in our brief, has said that the Police Commissioner's power to make regulations having the force of law, is conditioned upon their being reasonable.

The construction which the Corporation Counsel urges Your Honor to put on this regulation, as we have shown, would be unreasonable.

But we primarily, without waiving our constitutional rights, urge upon Your Honor to apply the regulation as written, to allow the Railway Express Agency to carry business notices, not only its own, but those of others, in the prosecution of its business of carrying goods, because those notices relate to the goods it carries.

I think we have made that point.

The Court: I am of the opinion that the traffic regulation [fol. 112] in question was intended to prohibit the type of advertising in which the defendant is engaged, on their delivery motor vehicles.

The Defendant is found Guilty. I'll listen to you on the question of fine.

This is obviously a case for appeal.

Mr. Carson: Yes, sir.

The Court: I am of the opinion that the regulation has been violated. Now do you wish to say anything on the question of fine?

Mr. Carson: On the question of fine, we urge that since the defendant acted in good faith on the advice of counsel and will appeal this case promptly, the fine should either be nominal, or there should be a suspended sentence.

Mr. Elias: Your Honor, I feel that they have been a constant violator and that therefor they should be given the maximum fine.

The Court: This is the first time it has been tested, isn't it?

Mr. Elias: As far as the corporation goes, yes, but——

The Court: I'll impose a $25.00 fine.

Mr. Carson: We ask for a stay of execution, pending appeal.

The Court: You don't need that. You may pay your fine under protest and your rights are preserved.

I hereby certify that the foregoing is a correct transcript of my notes in the above case.

Joseph A. Zinman, Official Stenographer.

[fol. 113] Manhattan Traffic Court, City Magistrates' Courts, City of New York

People of the State of New York, On complaint of various police officers,

vs.

Charles Gerchario, Michael Long, and 11 others

Testimony

Feb. 28, 1946

Docket No. 623. Complaining Officer, George A. Liedvogel; Defendant, Emil Hugo Miller.

Docket No. 624. Complaining Officer, George A. Liedvogel; Defendant, Chas. A. Harrington.

Docket No. 625. Complaining Officer, George A. Liedvogel; Defendant, Frederick Reilly.

Docket No. 626. Complaining Officer, George A. Liedvogel; Defendant, Howard Broems.

Docket No. 628. Complaining Officer, Andrew Bengston; Defendant, Edward Halloran.

Docket No. 629. Complaining Officer, Andrew Bengston; Defendant, Thomas McCabe.

Docket No. 630. Complaining Officer, Andrew Bengston; Defendant, Milton Mulhare.

Docket No. 631. Complaining Officer, Andrew Bengston; Defendant, Jeremiah McCarty.

Docket No. 632. Complaining Officer, Denis F. Gallagher; Defendant, Michael Long.

Docket No. 633. Complaining Officer, Denis F. Gallagher; Defendant, George Bauer.

Docket No. 634. Complaining Officer, Denis F. Gallagher; Defendant, Charles Gerachio.

Docket No. 642. Complaining Officer, John McCarthy; Defendant, Herman Gipes.

Docket No. 643. Complaining Officer, John McCarthy; Defendant, John Murray.

[fol. 114] All these defendants were arraigned on Jan. 2, 1945, but the cases were adjourned from time to time and came up today, Feb. 28, 1946, for trial. The assistant corporation counsel and counsel for defendants declared they were ready.

APPEARANCES:

Sylvan Elias, Esq., Assistant Corporation Counsel, For the People.

Ralph M. Carson, Esq., Davis, Polk, Wardwell, Sunderland & Kiendl, For Defendants.

Feb. 28, 1946.

Before Hon. Raphael Koenig, City Magistrate

Mr. Elias: All are charged with a violation of Art. 9, Par. 124 of the Traffic Regulations; Display Advertising.

Mr. Carson: Your Honor, there are a number of controlling questions of law here. The Corporation Counsel and ourselves have prepared briefs which I would like your Honor to see in advance of the presentation of the evidence.

The Court: What are the circumstances?

Mr. Elias: I do not think there will be any dispute on the facts.

STIPULATIONS AS TO FACTS

The Court: Can you stipulate as to the facts and also [fol. 114] stipulate that the nine proceedings be tried together and that separate judgments be rendered?

Mr. Carson: That is satisfactory to the defendants. I would like to read into the record or hand to your Honor an answer on behalf of each of the nine defendants.

The Court: What is the charge?

Mr. Elias: It is a violation of Sec. 124 of Article 9 of the Traffic Regulations of the City of New York, that prohibits

advertising vehicles. And we claim that these men—all of whom were drivers of Railway Express Agency trucks—were driving those particular trucks carrying advertising on their sides. This constitutes a violation of the particular section with which they are charged.

The Court: What advertising was it? Is the officer here?

Mr. Elias: Yes; I have all my witnesses.

Police Officer: One advertisement said on the sign: "National Velvet with Mickey Rooney in the Cast." The other says: "Prince Albert" on the sign. The other says: "National Velvet." They say "National Velvet" on the right side; they say "Prince Albert" on the other. Another one "National Velvet." All "National Velvet" and other side "Prince Albert." The signs are about three to four feet long and about three feet wide. About four feet square.

Mr. Carson: Were they smaller than the side of the truck?

Police Officer: Yes, sir.

Mr. Carson: Did you look into the truck to see what they were carrying?

[fol. 116] Police Officer: They had merchandise, cases, this and that.

Mr. Carson: They were all loaded?

Police Officer: Yes, sir.

Mr. Carson: You did not open the cases to see what they were?

The Court: In other words, it is stipulated that these trucks were in operation by the corporation, driven by these defendants and had on the side the signs enumerated by the police officer and were also engaged in the business of the corporation.

Mr. Carson: That they were transporting merchandise which was not inspected by the police officers. That is true in all cases.

The Court: Is that the stipulation in which you desire to enter?

Mr. Elias: Yes.

The Court: Anything additional?

Mr. Carson: I would like to have it stipulated that, as testified by the secretary of the corporation in a prior case, the corporation had, pursuant to the action of the board of directors authority to enter into advertising contracts.

Mr. Elias: I cannot stipulate as to that. He might have

testified to that. I would like to make an objection to that admission.

The Court: Subject to objection of this stipulation, is that correct?

Mr. Elias: Because as a matter of law, I do not think there is anything in their charter which can authorize them to do anything contrary to our law or regulations. We feel that the particular points in this case have been adjudicated. [fol. 117] The case came up before Magistrate Rothenberg six months ago against the Railway Express Agency. He found them guilty. That case is on appeal, although not yet effected. We believe the interpretation of this section has been adjudicated.

The Court: I am trying to dispose of the taking of testimony.

Mr. Carson: The Corporation Counsel might stipulate as to the same evidence in this case given by Mr. Merry and Mr. Wilcox in the case he referred to.

Mr. Elias: I have no objection to concede that if they were called to testify, they would testify the same way.

The Court: I will read the briefs and notify counsel when to appear. I am here only for today. Argument will be held at 100 Centre St. When I am sitting there, I will have the clerk notify you.

Mr. Elias: Will you then concede that the officers in these cases, if called to testify, would testify that on December 28, 1944, in front of the different premises located within the City and County of New York, they saw trucks of the Railway Express Agency, Inc., driven by the respective defendants in these cases, and that each one of these trucks carried signs on the exterior of the vehicles, displaying things other than Railway Express Agency, Inc.

Mr. Carson: Yes, we will so concede.

The Court: The nature of the advertising has been described.

Mr. Elias: If that is so, it might be convenient for the court also to include the other four cases.

[fol. 118] Mr. Carson: I am perfectly willing.

Mr. Elias: All the same point. The only reason we adjourned it is because the police officer has retired.

(Court attendant read the following:)

Charles Arthur Harrington, Docket 624 (1945)
Frederick Reilly " 625 "
Emil Miller " 623 "
Howard Broems " 626 "

Mr. Carson: The same stipulation we made applies to these four cases.

Mr. Elias: That is correct.

Mr. Carson: It is stipulated that the same exhibits offered in the Railway Express Agency, Inc. cases, heretofore referred to, are to be deemed offered here in behalf of each of these defendants.

Mr. Elias: Yes; on behalf of the defendants. As far as the People are concerned, we are merely offering in evidence a certified copy of the Traffic Regulations promulgated by the Police Commissioner.

Mr. Carson: We will concede it.

Mr. Elias: In particular, Section 124.

Mr. Carson: In respect of each of these 13 defendants and in connection with the stipulation Mr. Elias has cited as to the trucks and their advertising, I take it that it is conceded by the People that each of these trucks was engaged at the time of the service of the summons in that conduct of the ordinary business of the Railway Express Agency.

[fol. 119] Mr. Elias: Yes.

Mr. Carson: On behalf of each of these defendants, I would like to read into the record, or have it deemed read, the answer I hold in my hand, which was involved in the last cases. I am perfectly willing to read it in or hand it to your Honor.

The Court: It will be received as an answer.

Mr. Carson: For each of the 13 defendants.

The Court: Yes; and made part of the record.

In other words, the sole question of law is, whether this regulation applies to the defendants engaged in the business of the corporation and having the specified advertising on the outside of the trucks.

Mr. Carson: That idea is correct. We want to urge on you the correct interpretation of the language you have before you. We want to discuss the constitutionality of the regulation. We are considering it as the courts have construed it.

I hereby certify that the foregoing transcript is a correct copy of my stenographic notes.

Samuel Danziger, Official Court Stenographer.

[fol. 120] CITY MAGISTRATES' COURTS OF THE CITY OF NEW YORK

Traffic Court, Borough of Manhattan, County of New York

Charge: Violation of Traffic Laws—Section 124.

Docket Nos.

(Twelve Complaints)

[SAME TITLE]

Stenographer's Minutes

New York, March 28, 1946.

Before Hon. Raphael P. Koenig, City Magistrate

Appearances: Sullivan H. Lewis, Esq., Assistant Corporation Counsel, Municipal Building, Borough of Manhattan, City, County and State of New York, For The People. Davis, Polk, Wardwell, Sunderland & Kiendl, Esqrs., Counselors at Law, Ralph M. Carson, Esq., of Counsel, 15 Broad Street, City, County and State of New York, For the Defendants.

James H. G. Green, Official Court Stenographer.

[fol. 121] PROCEEDINGS ON SENTENCE

. . . . . .

Appearances:

For the People: Sullivan H. Lewis, Esq., Assistant Corporation Counsel, Municipal Building, Park Row, Borough of Manhattan, City, County and State of New York.

For the Defendants: Davis, Polk, Wardwell, Sunderland & Kiendl, Esqrs., Counselors at Law; Ralph M. Carson, Esq., of Counsel, 15 Broad Street, Borough of Manhattan, City, County and State of New York.

The Court: Well, this case is now on before me for sentence; is that right?

Assistant Corporation Counsel: Yes, your Honor.

Counsel for Defendants: With separate judgment to be rendered in the case of each defendant.

Assistant Corporation Counsel: If your Honor pleases, these were thirteen prosecutions.

The Court: Yes. Do you want the argument taken down (to Counsel for defendants)?

Counsel for Defendants: Well, yes; I think we may as well have it taken down.

. . . . . .

[fol. 122] The Court: The sole question here is what kind of an automobile the vehicles were that the defendants were operating or driving; and I think a clear construction would be that it is a vehicle which has nothing to do with the business of the persons owning the vehicle making deliveries and advertising some other product. The matter may be determined by the proper court on appeal.

As far as the evidence is concerned (to Assistant Corporation Counsel), I don't suppose you are particularly interested in the penalty.

Assistant Corporation Counsel: I think it is entirely in your discretion. May I say just this, though?

The Court: Yes.

Assistant Corporation Counsel: There is no question, insofar as this particular traffic regulation is involved, the defendants' employers are persistent violators; and I think that your Honor should take that into consideration. But I believe a penalty your Honor fixed in each case, of course, will be all right.

Counsel for Defendants: I think that under all the circumstances it might be fair in these cases to suspend sentence in each.

[fols. 123-124] SENTENCE

The Court: Under the circumstances, I impose a fine of five dollars in each and every case; and I will adjourn each case until Monday for the fines to be paid at that time. Adjourned to April 1st, in Traffic Court, Manhattan; all fines to be paid on that date.

Assistant Corporation Counsel: I presume the question involved here is on appeal now. There are thirteen cases. The total is $65.

The Court: That is correct, and the fine in each case is to be paid on the adjourned date; namely: Monday, April 1st, 1946.

Counsel for Defendants: Yes, your Honor; the fines will all be paid at that time.

CERTIFICATION OF MINUTES

This is to certify that the foregoing is a true and correct transcript, taken from my original stenographic notes, of the proceedings had in the instant cases, heard before Hon. Raphael P. Koenig, City Magistrate, in War Emergency Court, Borough of Manhattan, City, County and State of New York, on the date therein set forth; namely: March 28th, 1946.

James H. G. Green, Official Court Stenographer, War Emergency Court, Borough of Manhattan, New York City, N. Y.

Dated May 27, 1946.

[fol. 125] CITY MAGISTRATE'S COURT OF THE CITY OF NEW YORK

Traffic Court: Borough of Manhattan

PEOPLE OF THE STATE OF NEW YORK, Plaintiff-Respondent,

against

RAILWAY EXPRESS AGENCY, INC., Defendant-Appellant

NOTICE OF APPEAL TO THE COURT OF APPEALS

SIRS:

Please take notice that pursuant to permission granted by Hon. John T. Loughran, Chief Judge of the Court of Appeals, on the 18th day of February, 1947, the defendant hereby appeals to the Court of Appeals from the order of the Court of Special Sessions of the City of New York, Appellate Part, First Judicial Department, entered in the office of the Clerk of said Court on the 21st day of January, 1947, which order affirms in all respects the judgment of conviction of the defendant upon the charge of violating Article 9, Sec-

tion 124 of the Traffic Regulations of the City of New York, and sentencing the defendant Railway Express Agency, Inc., to a fine of $25.00, and the defendant appeals from each and every part of said order as well as from the whole thereof.

[fol. 126] Dated, February 27, 1947, New York, N. Y.

Davis, Polk, Wardwell, Sunderland & Kiendl, Attorneys for Defendant-Appellant, Office and Post Office Address, 15 Broad Street, Borough of Manhattan, City of New York 5, N. Y.

To: Charles E. Murphy, Esq., Corporation Counsel of the City of New York, Attorney for Plaintiff-Respondent, Municipal Building, Borough of Manhattan, New York City, N. Y.; Frank Hogan, Esq., The District Attorney, New York County; The Clerk of the Appellate Part of the Court of Special Sessions, Criminal Courts Building, 100 Centre Street, Borough of Manhattan, New York City, N. Y.; The Chief Clerk of the Magistrate's Court.

[fol. 127] City Magistrate's Court of the City of New York

Traffic Court: Borough of Manhattan

People of the State of New York, Plaintiff-Respondent,

against

Charles Gercharo, Michael Long, and 11 others, Defendants-Appellants

Notice of Appeal to the Court of Appeals

Sirs:

Please take notice that pursuant to permission granted by Hon. John T. Loughran, Chief Judge of the Court of Appeals, on the 18th day of February, 1947, the defendants hereby appeal to the Court of Appeals from the order of the Court of Special Sessions of the City of New York, Appellate Part, First Judicial Department, entered in the office of the Clerk of said Court on the 21st day of January, 1947, which order affirms in all respects the judgment of conviction of the defendants upon the charge of violating Article

9, Section 124 of the Traffic Regulations of the City of New York, and sentencing the defendants Charles Gerchario, Michael Long, and 11 others, to a fine of $5.00 each, and the defendants appeal from each and every part of said order as well as from the whole thereof.

[fol. 128] Dated, February 27, 1947, New York, N. Y.

Davis, Polk, Wardwell, Sunderland & Kiendl, Attorneys for Defendants-Appellants, Office and Post Office Address, 15 Broad Street, Borough of Manhattan, City of New York 5, N. Y.

To: Charles E. Murphy, Esq., Corporation Counsel of the City of New York, Attorney for Plaintiff-Respondent, Municipal Building, Borough of Manhattan, New York City, N. Y.; Frank Hogan, Esq., The District Attorney, New York County; The Clerk of the Appellate Part of the Court of Special Sessions, Criminal Courts Building, 100 Centre Street, Borough of Manhattan, New York City, N. Y.; The Chief Clerk of the Magistrate's Court.

[fol. 129] At an Appellate Part of the Court of Special Sessions of the City of New York, held in and for the First Judicial Department, in the County of New York on the 21st day of January, 1947

Present: Hon. George B. DeLuca, Hon. William B. Northrop, Hon. Nathan D. Perlman, Justices.

Docket No. 65—NY—45

THE PEOPLE OF THE STATE OF NEW YORK, Respondent,

against

RAILWAY EXPRESS AGENCY, INC., Appellant

ORDER OF AFFIRMANCE

Heretofore, and on the 2nd day of July, 1945, the defendant-appellant, Railway Express Agency, Inc. having been tried and convicted upon the charge of Vio. Art. 9, Sec. 124 of the Traffic Regulations of the City of New York by Hon. Morris Rothenberg, a City Magistrate, at the Traffic District City Magistrates' Court, in the Borough

of Manhattan, City of New York, and sentenced as follows: $25.00 fine and an appeal from the judgment aforesaid having been taken to this Court by Railway Express Agency on the 30th day of July, 1945, and the said appeal having [fol. 130] been argued by Messrs. Davis Polk Wardwell Sunderland & Kiendl of counsel for the Appellant, and by Mr. John J. Bennett (Mr. Seymour B. Quel, Mr. Stanley Buchsbaum) of counsel for the Respondent; and due deliberation having been had thereon, it is

Ordered and Adjudged, that the said judgment so appealed from be and the same is hereby in all respects affirmed. Opinion per curiam.

Enter.

(Sgd.) George B. DeLuca, Justice Presiding.

CERTIFICATION BY CLERK

Appellate Part of the Court of Special Sessions of the City of New York, 1st Judicial Department, Clerk's Office, County of N. Y.

I, D. V. Kelly, Opinion Clerk of the Court of Special Sessions of the City of New York, do hereby certify that the foregoing is a true copy of the order made by the Appellate Part of this Court upon the Appeal in the above entitled action or proceeding, and entered in my office on the 21st day of January, 1947 and that the papers upon which said appeal was heard are filed in this office.

Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, in the County of N. Y., this 21st day of January, 1947.

D. V. Kelly, Opinion Clerk.

[fol. 131] At an Appellate Part of the Court of Special Sessions of the City of New York, held in and for the First Judicial Department, in the County of New York on the 21st day of January, 1947

Present: Hon. George B. DeLuca, Hon. William B. Northrop, Hon. Nathan D. Perlman, Justices.

Docket No. 29—NY—46

THE PEOPLE OF THE STATE OF NEW YORK, Respondent,

against

CHARLES GERCHARIO, et al., Appellant.

ORDER OF AFFIRMANCE

Heretofore, and on the 28th day of March, 1946, the defendants-appellants, above named having been tried and convicted upon the charge of Vio. Art. 9, Sec. 124 of the Traffic Regulations of the City of New York by Hon. Raphael Koenig, a City Magistrate, at the Traffic District City Magistrates' Court, in the Borough of Manhattan, City of New York, and sentenced as follows: Each $5.00 fine and an appeal from the judgments aforesaid having been taken to this Court by above-named on the 16th day of April, 1946, and the said appeal having been argued by Messrs. Davis Polk Wardwell Sunderland & Kiendl of [fol. 132] counsel for the Appellants, and by Mr. John J. Bennett; Mr. Seymour B. Quel, Mr. Stanley Buchsbaum, of counsel for the Respondent; and due deliberation having been had thereon, it is

Ordered and Adjudged, that the said judgments so appealed from be and the same are hereby in all respects affirmed. Opinion per curiam.

Enter.

(Sgd.) George S. DeLuca, Justice Presiding.

CERTIFICATION BY CLERK

Appellate Part of the Court of Special Sessions of the City of New York, 1st Judicial Department, Clerk's Office, County of N. Y.

I, D. V. Kelly, Opinion Clerk of the Court of Special Sessions of the City of New York, do hereby certify that

the foregoing is a true copy of the order made by the Appellate Part of this Court upon the Appeal in the above entitled action or proceeding, and entered in my office on the 21st day of January, 1947 and that the papers upon which said appeal was heard are filed in this office.

Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, in the County of New York, this 21st day of January, 1947.

D. V. Kelly, Opinion Clerk.

[fol. 133] Court of Special Sessions of the City of New York, Appellate Part—First Judicial Department

People of the State of New York, Respondent,

against

Railway Express Agency, Inc., Defendant-Appellant

People of the State of New York, Respondent,

against

Charles Gerchario and 12 Others, Defendants-Appellants

Opinion

Per Curiam:

The appeals herein are from judgments of conviction against the appellant Railway Express Agency, Inc. and thirteen individual appellants for violations of Section 124 of the Traffic Regulations of the City of New York. The thirteen individual appellants were drivers of trucks for the appellant Railway Express Agency, Inc. All fourteen cases have been consolidated for the purposes of appeal and are being treated as one appeal.

[fol. 134] Sec. 124 of the Traffic Regulations of the City of New York reads as follows:

"Sec. 124. Advertising vehicles.

No person shall operate, or cause to be operated, in or upon any street an advertising vehicle; provided that nothing herein contained shall prevent the putting of business notices upon business delivery vehicles, so long as such vehicles are engaged in the usual business

or regular work of the owner and not used merely or mainly for advertising."

The appellant Railway Express Agency, Inc. for some time past has, by contract with an advertising agency and for valuable consideration, permitted the use of the space on the exterior sides of its numerous trucks plying the streets of the City of New York, for general advertising purposes unconnected with its business. The claim is made on this appeal that Sec. 124 of the Traffic Regulations, correctly interpreted, does not prohibit such practice, and if it does, in such case the regulation is unreasonable and unconstitutional.

Insofar as the interpretation of the language of Sec. 124 is concerned, the opinion of the Court of Appeals in Fifth Avenue Coach Company v. The City of New York, 194 N. Y. 19, (1909) is controlling. In that case the method of advertising was exactly like that in the instant case, and the language of the ordinance in that case was substantially the same as the language of the regulation under consideration herein. The Court of Appeals held that the [fol. 135] ordinance prohibited general advertising for hire whether carried on vehicles wholly used for advertising or in connection with the ordinary or usual business in which the vehicles were engaged; th business notices on vehicles were not prohibited so long as the vehicles were engaged in the usual business or regular work of the owner, but even such notices were prohibited on vehicles used merely or mainly for advertising. By business notices, undoubtedly was meant business notices relating to the business of the owner while the vehicle was being used in the course of the owner's business, otherwise the second part of the ordinance would tend to nullify the prohibition contained in the first part thereof.

The Fifth Avenue Coach Company case was a suit in equity for an injunction against the enforcement of a penal ordinance. The Court in its opinion referred to the fact that the legisaltive charter provisions of the Fifth Avenue Coach Company did not contain authorization to engage in general advertising for hire. Appellant contends that this implies a holding by the Court that the plaintiff in that case had no standing in equity, and that this being a sufficient reason for ousting the plaintiff the remainder

of the opinion was obiter dictum. With this we do not agree. The interpretation of the ordinance was among the main issues litigated and the Court's opinion on this branch of the case constituted one of the several reasons for denying plaintiff the relief it sought. It was not obiter dictum. (Matter of Broderick v. City of New York, 295 N. Y. 363.)

The essential difference between the Fifth Avenue Coach Company case and the instant one is that on this appeal [fol. 136] we have before us a traffic regulation whereas in the Fifth Avenue Coach Company case the Court had a city ordinance under consideration. It is probably correct to say that an ordinance regulating the use of city streets may be sustained on broader grounds than a Police Department regulation which is adopted pursuant to the restrictive language of a provision of the Charter of the City of New York, in this case sec. 435 thereof.

The pertinent part of Sec. 435 of the Charter reads as follows:

> "Sec. 435. Department; duties.—The police department * * * shall have the power * * * to * * *; regulate, direct, control and restrict the movement of vehicular and pedestrian traffic for the facilitation of traffic and the convenience of the public as well as the proper protection of human life and health; * *. The commissioner shall make such rules and regulations for the conduct of pedestrian and vehicular traffic in the use of the public streets, squares and avenues as he may deem necessary * * *."

Appellant disputes the authority of the Police Commissioner to adopt regulation 124. Obviously, in order to sustain the validity of the regulation it must be found to come within the authority of the powers granted the Police Commissioner by Charter Section 435. In the Fifth Avenue Coach Company case the Court found that the display of advertising on vehicles passing through the public streets [fol. 137] tends to congestion thereon and to some extent interferes with those engaged in business or having their homes thereon. If the appellants' trucks can be covered on the outside with advertisements for hire, then the business delivery vehicles of all other owners engaged in their usual business or regular work can rightfully do likewise. The Court described in vivid language the effect of such

advertising on cars and vehicles of many descriptions and in great numbers in producing congestion upon the streets.

An additional consideration of great importance is the matter of safety. It cannot be doubted that advertising on vehicles daily using the streets of the city do constitute a distraction to vehicle drivers as well as the pedestrian public and do affect the safety of the public in the use of the streets. This element of safety comes directly within the power of the Police Commissioner contained in Sec. 435 of the Charter to regulate the movement of vehicular traffic for the convenience of the public as well as the proper protection of human life and health.

The point is made that in view of the Police Commissioner's authority to regulate the "movement" of vehicular and pedestrian traffic, the traffic regulation must be construed to be directed only to the movement of vehicles operated for no purpose but to carry advertising and not to the movement of vehicles being used in the business of the owner and incidently carrying advertising. We see no important distinction between the two situations. If movement is prohibited in the one case it can be in the [fol. 138] other, provided there is a reasonable basis for each restriction. The regulation prohibits the use of the streets by advertising vehicles of all kinds, whether merely or mainly used for advertising or for advertising not related to the owner's business but while the vehicle is being used in the course of his business. It is the advertising vehicle which is being restricted. It is not a matter of the extent to which a vehicle is used for advertising purposes.

The exception in the regulation permitting business notices of the owner on vehicles is a reasonable one. A distinction between general advertising for profit and business notices is a reasonable classification. (Central Lumber Co. v. South Dakota, 226 U. S. 157, 160; Waldorf-Astoria Hotel Co. v. The City of New York, 212 N. Y. 97, 107, 108; People v. Klinck Packing Co., 214 N. Y. 121, 136, 137.

It is our conclusion that the regulation bears a reasonable relationship to the subject of traffic control and public safety and that it reasonably comes within the charter grant of power to the Police Commissioner. In our opinion, the regulation is constitutional.

Accordingly, the judgments are affirmed.

(Sgd.) George B. DeLuca, Justice Presiding.

[fol. 139] IN COURT OF APPEALS OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, Respondent,

against

RAILROAD EXPRESS AGENCY, INC., Appellant

PEOPLE OF THE STATE OF NEW YORK, Respondent,

against

CHARLES GERCHARIO and 12 others, Appellants.

ORDER CERTIFYING QUESTIONS OF LAW AND GRANTING LEAVE OF APPEAL

Upon the orders made herein by the Appellate Part of the Court of Special Sessions of the City of New York, First Judicial Department, on January 21, 1947 in the above entitled fourteen cases consolidated for purposes of appeal, upon the opinion of said Court *per curiam* and all proceedings heretofore had in said fourteen cases and upon the annexed affidavit of Ralph M. Carson sworn to January 24, 1947,

It is, pursuant to Code of Criminal Procedure §520,

Certified that questions of law exist in said cases which ought to be reviewed by the Court of Appeals; and it is accordingly

[fol. 140] Ordered that the above named appellants and each of them have and are granted leave to appeal to the Court of Appeals from the respective judgments of conviction herein.

Dated, Albany, N. Y. February 18, 1947.

John T. Loughran, Judge of the Court of Appeals.

[fol. 141] IN COURT OF APPEALS OF NEW YORK

[Titles omitted.]

STIPULATION AS TO CONTENTS OF RECORD ON APPEAL

It is hereby stipulated, subject to the approval of the Court

(1) That in the preparation of the record on appeal herein the printing of the following exhibits be dispensed with:

[fol. 142] Exhibits of the Plaintiff, People of the State of New York

Exhibit No. 1.—Traffic Regulations promulgated by the Police Commissioner of the City of New York. (Article 9, Section 124.)

Exhibits Nos. 2A and 2B.—Stipulation as to facts for purposes of trial.

Exhibit No. 3.—Photograph of truck of Railway Express Agency, Inc., bearing license number 290413. On the left side was advertised the motion picture, "Without Love; Spencer Tracy and Katherine Hepburn; M. G. M."

Exhibit No. 4.—Photograph of right side of same truck, advertising "Ringling Brothers and Barnum and Bailey Circus."

Exhibit No. 5.—Photograph of truck of Railway Express Agency, Inc., bearing license number 290855. On the left side of the truck was advertised "I'd walk a mile for a Camel."

Exhibit No. 6.—Photograph of right side of same truck, advertising "Ringling Brothers and Barnum and Bailey."

Exhibit No. 7.—Photograph of truck of Railway Express Agency, Inc., bearing license number 291146. On the right side of the truck was advertised "W. O. R. tune in 710. This is Mutual."

[fol. 143] Exhibit No. 8.—Photograph of left side of same truck, advertising, "Ringling Brothers and Barnum and Bailey Circus."

Exhibits of Defendant, Railway Express Agency, Inc.

Exhibit A.—Copy of certificate of incorporation of the Railway Express Agency, Inc., dated December 6, 1928.

Exhibit B.—Minutes of the meeting of the Board of Directors of Railway Express Agency, Inc., dated October 27, 1942, authorizing the Company to enter into a contract for advertising.

Exhibit C.—Minutes of the meeting of the Board of Directors of Railway Express Agency, Inc., dated January 26, 1943, authorizing the Company to enter into a contract for advertising.

Exhibits D, E and F, for identification.—Performance cards of C. P. Dunn, J. A. Buckley and H. Hanlon dated May 2, 1945, operators of trucks owned by Railway Express Agency, Inc., photographed in People's Exhibits Nos. 3-8. Performance cards show the manner in which the trucks operated, showed they were also loaded, showed what they carried, and hours of operation.

Exhibit G, for identification.—Delivery record of Railway Express Agency, Inc., showing the deliveries to the Ringling Brothers and Barnum and Bailey Circus.

[fol. 144] Exhibits H, I and J, for identification.—Three delivery records of Railway Express Agency, Inc., showing deliveries to the Ringling Brothers and Barnum and Bailey Circus.

Exhibits K to O, for identification.—Five photographs of street cars carrying advertising, run by the City of New York. Photographs were taken on Flatbush Avenue, Brooklyn in the week of January 7th to 13th, 1945.

and that any party may refer to any of the said exhibits in its brief and submit any of them to the Court on the argument of this appeal with the same force and effect as if the same were printed in full in this record;

(2) That the appeals in the above-entitled actions be heard together on a combined record; and

(3) That an order to this effect may be entered without further notice.

Dated: New York, N. Y., February 27, 1947.

Davis Polk Wardwell Sunderland & Kiendl, Attorneys for Defendant-Appellant Railway Express Agency, Inc. and Attorneys for Defendants-Appellant Charles Gerchario, Michael Long and 11 others. Charles E. Murphy, Esq., Corporation Counsel of the City of New York, Attorney for Plaintiff-Respondent, People of the State of New York.

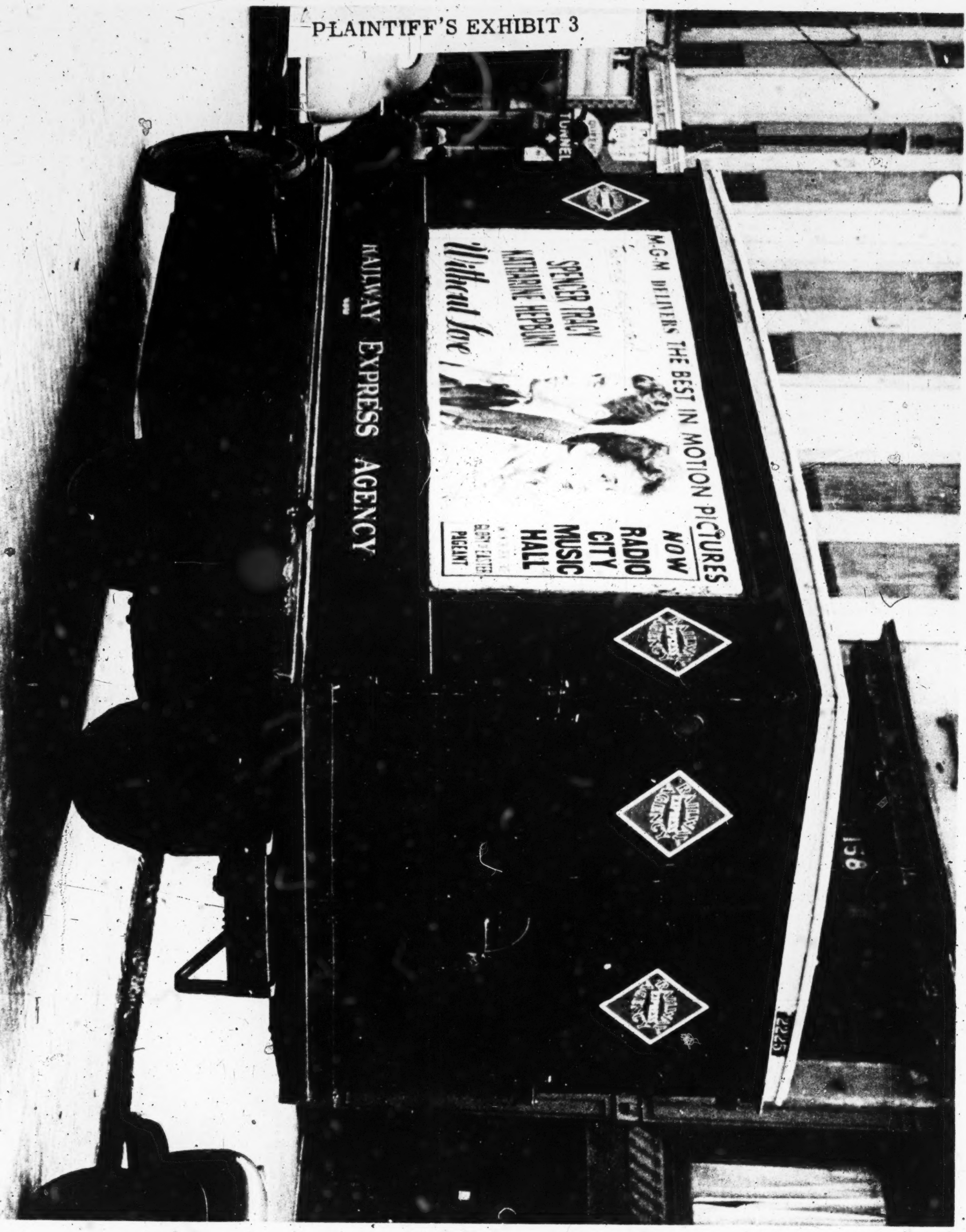
[fols. 145-146] STIPULATION WAIVING CERTIFICATION IN COURT OF APPEALS

Pursuant to Section 170 of the Civil Practice Act, it is hereby stipulated that the papers as herein printed consist of true and correct copies of the notices of appeal to the Court of Appeals, the orders of affirmance, the opinion of the Appellate Part of the Court of Special Sessions, First Department, and all the papers upon which said orders of affirmance and opinion are founded, all of which are now on file in office of the Clerk of the Appellate Part of the Court of Special Sessions, First Department, and certification thereof pursuant to Sections 458 and 532 of the Code of Criminal Procedure and otherwise is hereby waived.

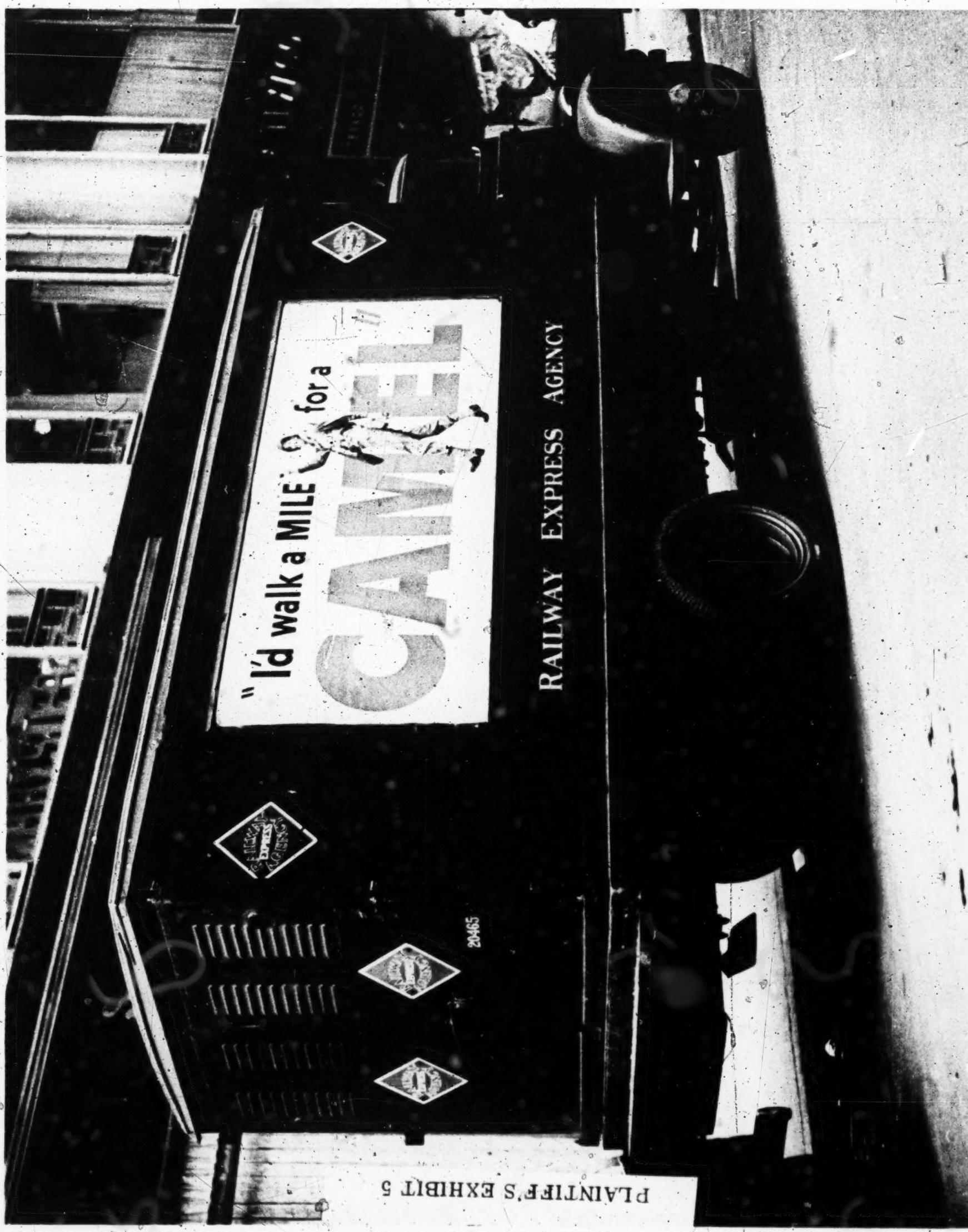
Dated: New York, N.Y., May 16, 1947.

Davis Polk Wardwell Sunderland & Kiendl, Attorneys for Defendants-Appellants. Charles E. Murphy, Corporation Counsel, Attorney for Plaintiff-Respondent.

PLAINTIFF'S EXHIBIT 3

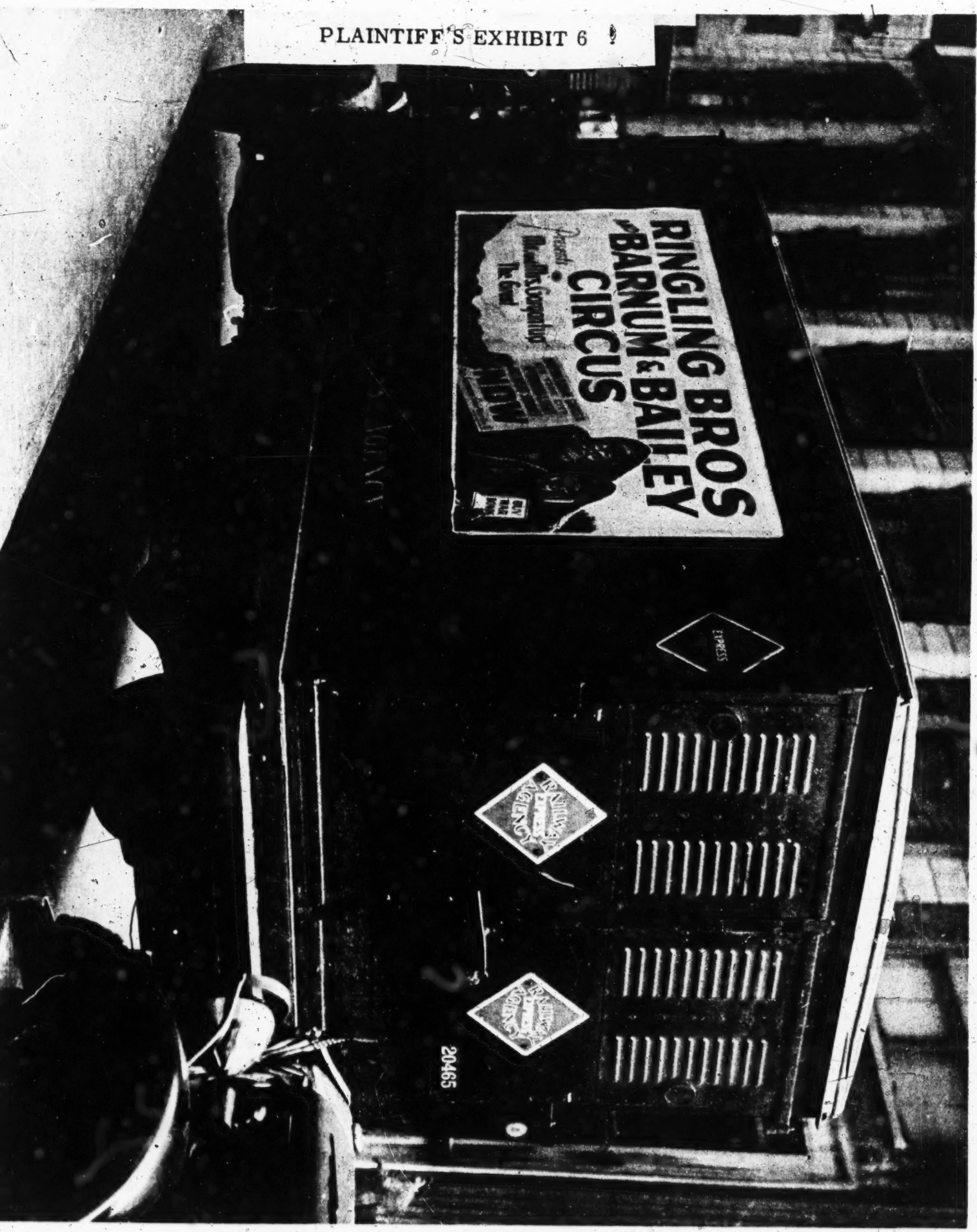


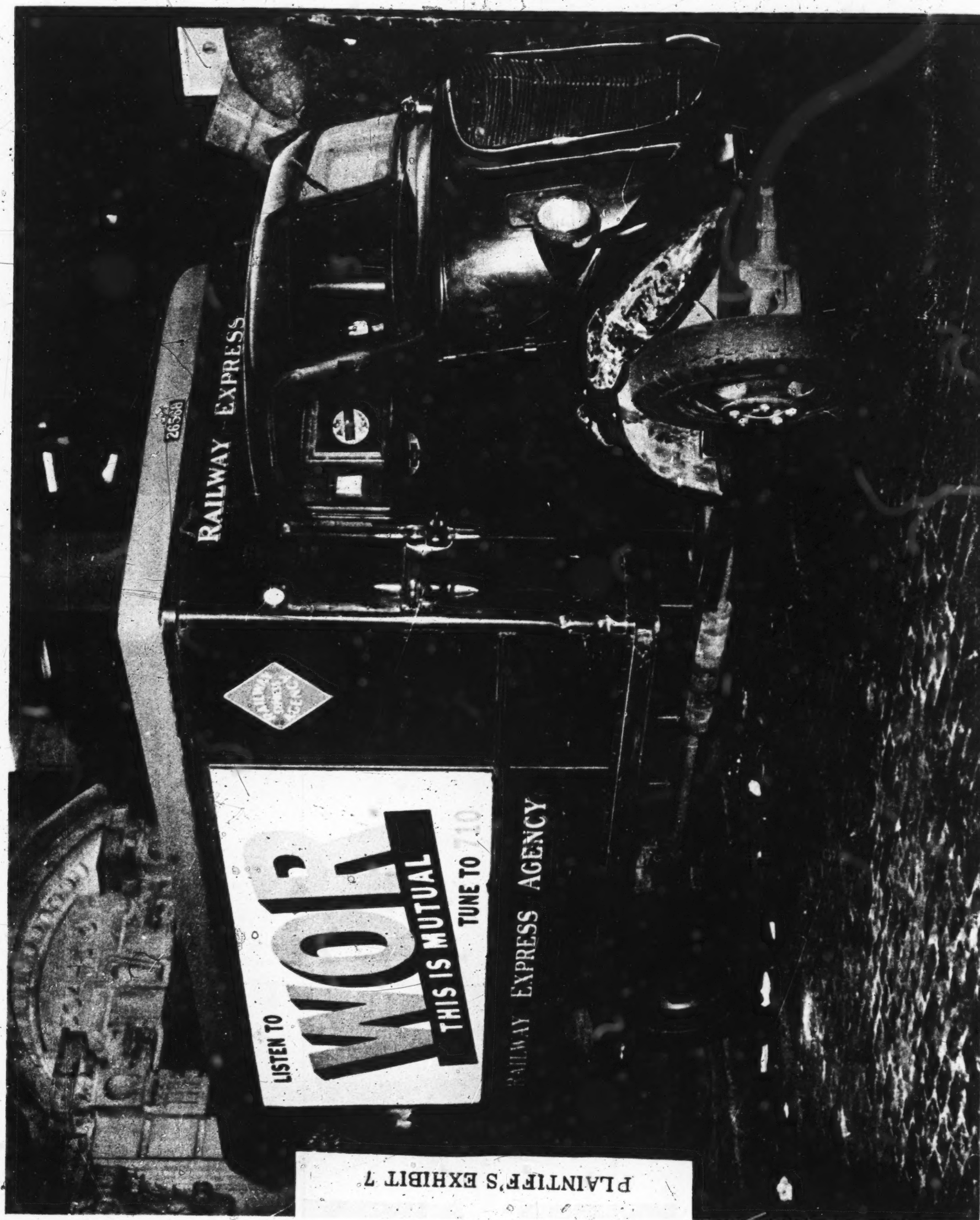
PLAINTIFF'S EXHIBIT 4



PLAINTIFF'S EXHIBIT 5

PLAINTIFF'S EXHIBIT 6





PLAINTIFF'S EXHIBIT 7

PLAINTIFF'S EXHIBIT 8

[fol. 154] DEFENDANT'S EXHIBIT "A"

Certificate of Incorporation of Railway Express Agency, Incorporated

[fol. 155] First. The name of this corporation is Railway Express Agency, Incorporated.

Second. The principal office or place of business of this corporation in the State of Delaware is located at No. 7 West 10th Street, in the City of Wilmington, County of New Castle.* The name and address of its resident agent is the Corporation Trust Company of America, No. 7 West 10th Street, Wilmington, Delaware.

Third. The nature of the business and the objects and purposes to be transacted, promoted and carried on by this corporation are:

1. To engage in, conduct and carry on in the State of Delaware, and in and between any and all of the States of the United States, the District of Columbia, the territories, colonies and possessions of the United States and in foreign countries as agent or otherwise, the express transportation business; and to handle, transport and forward by railroad, highway, water and air by means of such instrumentalities of transportation, carriage and conveyance as it may from time to time use, goods, wares, merchandise, money, bills, notes, bullion, packages, parcels and other movable personal property over and upon such lines and routes as may from time to time or at any time be established by it or with its approval, and in and between the points, communities and stations at which it may from time to time or at any time establish and continue agencies; and to acquire, have, possess and exercise all the powers, [fol. 156] privileges, rights and franchises necessary, appropriate or convenient for the aforesaid purposes, including all such as may be incident and proper for express carriers; with full power and authority to give such security in the nature of a general transportation bond or bonds as may be required by the laws of the United States and the

* Address of principal office has been changed to 100 West 10th St. and name and address of resident agent have been changed to Corporation Trust Company, 100 West 10th St.

regulations relating thereto for the transportation and delivery of dutiable merchandise and other property in bond from port to port in the United States or through the United States; and to take bonds of indemnity with or without security from its agents and employees;

2. To own, construct, purchase, lease or otherwise acquire and to use, equip, repair, supply and maintain railway cars, rolling stock and machinery of all kinds; also wagons, trucks, motor vehicles, airplanes and all other means and instrumentalities of transportation and conveyance by land, air and water; also ice houses, ice factories, refrigerating plants, warehouses and storage plants; also garages, stables, hangars, repair shops, storage yards, scales, platforms and other structures and appliances for the care, maintenance and repair of any of said equipment and facilities; and to sell, lease, sublet, rent or otherwise dispose of any of the aforesaid equipment, properties and instrumentalities or the use or service thereof;

3. To buy, exchange, contract for, lease and in any and all other ways acquire, hold and own, personal property of every character and description and to sell, mortgage, lease and otherwise dispose of same; and without restriction or limit as to amount to purchase or otherwise acquire, hold, own, use, improve, lease, mortgage, sell, convey or otherwise dispose of real property in any of the states, districts, territories, colonies and dependencies of the United States and in any and all foreign countries subject to the laws of such state, territory, colony, dependency or country.

[fol. 157] 4. To protect, preserve and care for, milk, cream, fruits, vegetables, meats and other perishable commodities, either while in transit or while in storage, including the icing, refrigeration, ventilation, loading, unloading, handling and storage of such commodities;

5. To engage in any kind of manufacturing business and to buy, exchange, contract for, lease, construct and otherwise acquire, take, have and own, and to sell, mortgage, lease or otherwise dispose of manufacturing plants and to manage, operate, maintain, improve and develop the same;

6. To apply for, obtain, register, purchase, lease or otherwise acquire and to hold, own, use, sell, assign, lease, grant licenses in respect of, mortgage and in any manner deal with or contract in reference to any copyrights, trade

marks, trade names, brands, labels, patent rights, patent processes, letters patent of the United States or of any foreign country, or any interest therein, and to use, operate and develop the same;

7. To acquire by purchase, subscription, exchange or otherwise and to hold for investment or otherwise, sell, assign, guarantee, transfer, mortgage, pledge or otherwise deal with or dispose of shares of the capital stock of, or any bonds, securities, debentures, obligations or evidences of indebtedness created by, any corporation or corporations organized under the laws of the State of Delaware or of any other state, district or country, and also bonds or evidences of indebtedness of the United States or of any state, territory, dependency, subdivision or municipality thereof, and while the owner thereof to exercise all the rights, powers and privileges of ownership, including the right to vote on such thereof as shall have voting rights; and to provide or aid in any manner, financially or otherwise, any corporation or association whose stocks, bonds or other evidences of indebtedness or securities are held in whole or in part or in any way guaranteed by this corporation; and for this [fol. 158] purpose to guarantee the contracts, dividends, stocks, bonds, notes and other obligations of such other corporations or associations; and to do any other acts or things designed to protect, preserve, improve or enhance the value of such stocks, bonds or other evidences of indebtedness;

8. To purchase, hold, sell and transfer shares of the capital stock, bonds or other obligations of this corporation to such an extent and in such manner and upon such terms as the Board of Directors of this corporation shall from time to time determine; provided that this corporation shall not use any of its funds or property for the purchase of its shares of capital stock, when such use would cause any impairment of the capital of this corporation; and provided, further, that shares of its capital stock belonging to this corporation shall not be voted directly or indirectly;

9. To organize or cause to be organized under the laws of the State of Delaware, or of any other state, district, territory, province or government, a corporation or corporations for the purpose of accomplishing any or all of the objects for which this corporation is organized, and to

dissolve, wind up, liquidate, merge or consolidate any such corporation or corporations or to cause the same to be dissolved, wound up, liquidated, merged or consolidated;

10. To purchase or otherwise acquire and to pay for in cash or in the stock, bonds, debentures, notes or other obligations of this corporation, all or any part of the business, good will, rights, assets and property, and to undertake or assume the whole or any part of the obligations or liabilities of any person, firm, association or corporation, and to manage, operate, maintain, improve and develop any such business and property; and to sell, mortgage, lease or otherwise dispose of the same;

11. To borrow money for any of the purposes of this corporation and to issue bonds, debentures, notes or other [fol. 159] obligations or evidences of indebtedness therefor and to secure the same by pledge or mortgage of the whole or any part of the property of this corporation, whether real or personal;

12. To loan money, and to enter into, perform and carry out contracts of every kind for any lawful purpose, with any person, firm, association or corporation, and to act as agent for any person, association, firm or corporation, and to draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, warrants, bonds, debentures, traveller's checks and other negotiable or transferable instruments and bills of lading, warehouse and other receipts;

13. To have and maintain one or more offices and to conduct and carry on any or all of its operations or business in any of the states, districts, territories, colonies and dependencies of the United States and in any or all foreign countries.

14. To carry on any other lawful business whatsoever which may seem to the Board of Directors of this corporation appropriate to be carried on in connection with the above purposes or calculated directly or indirectly to promote the interest of this corporation or enhance the value of its properties; and to have, enjoy and exercise all the rights, powers and privileges which are now or which may hereafter be conferred upon corporations formed under the same statutes as this corporation.

The foregoing clauses shall be construed both as objects and powers; and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of this corporation.

Fourth. The total number of shares of capital stock authorized is one thousand, which shares are without nominal or par value. Such stock may be issued by the corporation from time to time for such consideration as may be [fol. 160] fixed from time to time by the Board of Directors thereof.

The holder of any share or shares of stock of the corporation shall not sell, transfer or otherwise dispose of the same (other than to a successor corporation by consolidation, merger or purchase), without first offering such share or shares to the corporation for purchase at the price at which such shares were issued.

The subscription, purchase or other acquisition and the holding and ownership of shares of stock of this corporation shall, as far as may be lawful, be limited to the railroad corporations.

Fifth. The number of shares of capital stock with which this corporation will commence business is ten (10) shares without nominal or par value.

Sixth. The names and places of residence of each of the subscribers to the capital stock are as follows:

Name	Residence	Number of Shares
Marcus L. Bell	Noroton, Conn.	4
Henry W. Clark	New York, N. Y.	3
Frank C. Nicodemus, Jr.	Smithtown, N. Y.	3

Seventh. This corporation is to have perpetual existence.

Eighth. The private property of the stockholders shall not be subject to the payment of the corporate debts to any extent whatever.

Ninth. The number of Directors of this corporation shall be fixed by the By-laws and Directors shall be nominated as may be provided in the By laws, and the number of Directors as fixed by the By-laws and the method of nominating said Directors as fixed by the by-laws shall not be changed

[fol. 161] except with the consent of the holders of two-thirds of the stock of the corporation. Directors need not be stockholders. In case of an increase in the number of Directors, the additional Directors may be elected by the Board of Directors to hold office until the next annual meeting of the stockholders and until their successors are elected and qualified.

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized:

To make, alter, amend and rescind the By-laws of this corporation in the manner and subject to such limitations as are herein prescribed and as may be prescribed in said By-laws; to fix, determine and vary the amounts to be maintained as working capital or reserve funds to meet contingencies or for any other proper purpose; to authorize and cause to be executed mortgages and liens upon the real or personal property, or both, of this corporation.

If the By-laws so provide, to designate three or more of its members to constitute an Executive Committee, which Committee shall for the time being, as provided in the resolution of the Board creating it, or in the By-laws of this corporation, have and exercise, (except when the Board of Directors shall be in session), any or all of the powers of the Board of Directors in the management of the business and affairs of this corporation and have power to authorize the seal of this corporation to be affixed to all papers which may require it.

To sell, exchange, assign, convey or otherwise dispose of a part of the property, assets and effects of this corporation, less than the whole or less than substantially the whole thereof, on such terms and conditions as they shall deem advisable without the consent of the stockholders in writing or otherwise.

Pursuant to the affirmative vote of the holders of at least a majority of the stock issued and outstanding, given at a stockholders' meeting duly called for that purpose, or when [fol. 162] authorized by the written consent of the holders of at least a majority of the stock issued and outstanding, the Board of Directors shall have power and authority at any time to sell, lease or exchange all of the property and assets of this corporation, including its good will and its corporate franchise, upon such terms and conditions as its

Board of Directors deem expedient and for the best interest of the corporation.

This corporation may in its By-laws confer powers upon its Board of Directors in addition to the foregoing and in addition to the powers and authorities expressly conferred upon them by the laws of the State of Delaware.

Tenth. The stockholders and Board of Directors shall have power, if the By-laws so provide, to hold their meetings and to keep the books of this corporation (except such as are required by the laws of the State of Delaware to be kept in Delaware) and documents and papers of this corporation outside the State of Delaware and to have one or more offices within or without the State of Delaware at such places as may be designated from time to time by the Board of Directors.

Eleventh. This corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

We, the undersigned, being each of the original subscribers to the capital stock hereinbefore named for the purpose of forming a corporation to do business both within and without the State of Delaware, and in pursuance of the General Corporation Law of the State of Delaware, being Chapter 65 of the Revised Code of Delaware, and the acts amendatory thereof and supplemental thereto, do make and [fol. 163] file this certificate, hereby declaring and certifying that the facts herein stated are true, and do respectively agree to take the number of shares of stock hereinbefore set forth and accordingly have hereunto set our hands and seals this 6th day of December A. D., 1928.

In presence of Barbara Stoiber.

Marcus L. Bell (L.S.), Henry W. Clark (L.S.), Frank C. Nicodemus, Jr. (L.S.)

STATE OF NEW YORK,
County of New York, ss.:

Be it remembered, that on this 6th day of December, A. D. 1928, personally appeared before me, the subscriber, a notary public for the State of New York, Marcus L. Bell, Henry W. Clark and Frank C. Nicodemus, Jr., parties to the foregoing certificate of incorporation, known to me

personally to be such, and severally acknowledged that they signed, sealed and delivered the same as their several voluntary act and deed and that the facts therein stated were truly set forth.

Given under my hand and seal of office the day and year aforesaid.

Barbara Stoiber, Notary Public, New York County. County Clerk's No. 436, Reg. No. 0-75. Term expires March 30, 1930.

[fol. 164] DEFENDANT'S EXHIBIT "B"

Railway Express Agency, Incorporated
Office of Secretary, 230 Park Avenue, New York 17, N. Y.

I, E. R. Merry, Jr., Secretary of Railway Express Agency, Incorporated, do hereby certify that the following is a true and complete excerpt from minutes of regular meeting of the Board of Directors of said Railway Express Agency, Incorporated, held on October 27, 1942, at which a quorum was present and voted:

"Advertising on Company's Vehicles and Other Properties

"The President referred to the report he made at the meeting of this Board on August 25, 1942, regarding the contract for advertising on company's vehicles and other properties between Express Motion Poster Service, Inc., and Railway Express Agency, Incorporated, at which meeting the matter of negotiating a satisfactory arrangement with the Association of American Railroads or other advertisers or advertising agencies was left to him with power. He stated that, as he informally reported to this Board at its meeting of September 29th, he had secured from Express Motion Poster Service, Inc., an option to cancel as of October 31, 1942, its present contract with the Agency for the sum of $75,000, which option has been subsequently extended to and including November 30, 1942. He further stated that the Association of American Railroads is apparently not interested in utilizing the space on the sides of the Agency's motor vehicles; that consideration is now being given to three firm proposals; and that it is necessary to choose among these, and in any event desirable to cancel the contract with Express Motion Poster Service, Inc. He therefore recommended that he be authorized to exercise the

option with Express Motion Poster Service, Inc., for the cancellation of its contract with the Agency upon payment of not exceeding $75,000, and to negotiate a new contract upon the most favorable terms possible to the Agency.

"The matter was discussed, and on motion, duly made, seconded and carried, left to the President with power."

I further certify that the foregoing copy has been compared with the original minutes in the corporate minute books of Railway Express Agency, Incorporated and is found to be an accurate copy thereof.

In witness whereof, I have hereunto set my hand and affixed the corporate seal of said Railway Express Agency, [fol. 165] Incorporated, this 20th day of August, 1945.

E. R. Merry, Jr., Secretary. (Seal.)

[fol. 166] DEFENDANT'S EXHIBIT "C"

Railway Express Agency, Incorporated
Office of Secretary, 230 Park Avenue, New York 17, N. Y.

I, E. R. Merry, Jr., Secretary of Railway Express Agency, Incorporated, do hereby certify that the following is a true and complete excerpt from minutes of regular meeting of the Board of Directors of said Railway Express Agency, Incorporated, held on January 26, 1943, at which a quorum was present and voted:

"Advertising on Company's Vehicles and Other Properties

"The President referred to the authority granted him at the meeting of this Board of October 27, 1942, to exercise the option with the Express Motion Poster Service, Inc., to cancel its contract with Railway Express Agency, Incorporated for advertising on the Agency's vehicles and other properties upon the payment of not exceeding $75,000 and to negotiate a new contract upon the most favorable terms possible to the Agency. He reported that the option which had been extended to December 31, 1942, had been exercised as of December 24, 1942, by the payment to Express Motion Poster Service, Inc., of the sum of $43,464.67, being the net difference between the sum of $75,000 contemplated under the option and the net credits deducted therefrom, and that a general release of all claims and demands had been executed between the Agency and the Express Motion Poster Service, Inc., thus terminating as

of December 24, 1942, the Advertising Agreement, dated October 30, 1929, and effective January 1, 1930, between the Agency and Barron Collier and transferred and assigned by Barron Collier to Express Motion Poster Service, Inc., on January 3, 1930.

"The President further reported that as of December 31, 1942, he executed on behalf of the Agency a contract with Douglas Leigh, guaranteed by Douglas Leigh, Inc., and to be supported by a performance bond, covering advertising on the Agency's vehicles, effective on January 1, 1943, and terminating on February 28, 1949, with provision for earlier termination if the amounts paid to the Agency shall be less than graduated amounts stated in the contract, and subject to termination by six months' written notice after February 28, 1949. The gross revenues received under the contract are to be divided, after deducting approved advertising agency commissions and licenses and taxes levied on account of such advertising on the Agency's vehicles, on the basis of 75% to the Agency and 25% to Douglas Leigh. It is expected this contract will net the Agency at least $360,000 a year, or $1,080,000 over the 3-year period ending February 28, 1946, less the expense of placing posters on vehicles, for which period Douglas Leigh has secured a [fol. 167] contract with a national advertiser to display posters on one side of practically all of the Agency's vehicles, subject to termination at the end of the first and second years, if desired by the advertiser, upon payment of suitable premium. The other side is left free for other advertising, a few small contracts for which for short periods have been assigned over from the old contract and are being continued under the new advertising contract. Under the contract with Mr. Leigh, guaranteed by Douglas Leigh Inc., he is obligated to reimburse the Agency for the $43,464.67 which it paid to Express Motion Poster Service, Inc., for cancellation of the contract with that corporation."

I further certify that the foregoing copy has been compared with the original minutes in the corporate minute books of Railway Express Agency, Incorporated and is found to be an accurate copy thereof.

In witness whereof, I have hereunto set my hand and affixed the corporate seal of said Railway Express Agency, Incorporated, this 20th day of August, 1945.

E. R. Merry, Jr., Secretary. (Seal.)

[fol. 168] IN COURT OF APPEALS OF NEW YORK

297 N. Y. 703

THE PEOPLE OF THE STATE OF NEW YORK, Respondent

v.

RAILWAY EXPRESS AGENCY, INC., Appellant

THE PEOPLE OF THE STATE OF NEW YORK, Respondent,

v.

CHARLES GERCHARIO, EMIL H. MILLER, CHARLES A. HARRINGTON, Frank Reilly, Howard Broems, Edward Halloran, Thomas McCabe, Milton Mulhare, Jeremiah McCarty, Michael Long, George Bauer, Herman Gripes, and John Murray, Appellants

DECISION

Appeal, in the first above-entitled action, by permission of the Chief Judge of the Court of Appeals, from a judgment of the Court of Special Sessions of the City of New York, Appellate Part, in the first judicial department, entered January 21, 1947, which affirmed a judgment of the Magistrate's Court of the City of New York, Borough of Manhattan (Rothenberg, M.), convicting defendant corporation of violating section 124 of the Traffic Regulations of the City of New York. Appeal, in the second above-entitled action, by permission of the Chief Judge of the Court of Appeals, from a judgment of the Court of Special Sessions of the City of New York, Appellate Part, in the first judicial department, entered January 21, 1947, which affirmed a judgment of the Magistrate's Court of the City of New York (Koenig, M.), convicting the individual de-[fol. 169] fendants, drivers of the corporate defendant's trucks, of violating the same section. Section 124 provides: "No person shall operate, or cause to be operated, on or upon any street an advertising vehicle; provided that nothing herein contained shall prevent the putting of business notices upon business delivery vehicles, so long as such vehicles are engaged in the usual business or regular work of the owner and not used merely or mainly for advertising." Defendants' trucks, while carrying merchandise

in the regular course of the delivery business, bore advertising signs ranging from four feet square to four feet by ten feet. The corporate defendant is engaged in nationwide express transportation, and operates about 1,900 trucks in New York City. At least 80% of its general traffic to and from New York is interstate. Section 435 of the New York City Charter provides that the Police Department shall have the power and duty to "regulate, direct, control and restrict the movement of vehicular and pedestrian traffic for the facilitation of traffic and the convenience of the public as well as the proper protection of human life and health", and that the police commissioner "shall make such rules and regulations for the conduct of pedestrian and vehicular traffic in the use of the public streets, squares and avenues as he may deem necessary." In the Court of Appeals defendants contended that the regulation was in- [fol. 170] consistent with sections 10, 15 (Subds. 1, 19) and 90 of the Vehicle and Traffic Law; that the regulation was a burden on interstate commerce and deprived defendants of due process and the equal protection of the law; that defendants' trucks were not advertising vehicles within the meaning of the regulation; that the police commissioner's power was limited to the regulation of the movement of vehicles and did not allow a prohibition altogether of the movement of certain vehicles, and that there was neither a local law enacted by the City Council nor delegation by the Council under a local law to the police commissioner of power to make rules or regulations to carry out the law.

. . . . . .

Judgments affirmed; no opinion.

Concur: Lewis, Conway, Thacher and Dye, JJ. Dissenting: Loughran, Ch. J., Desmond and Fuld, JJ., on the ground that this regulation of the police commissioner, as interpreted to forbid these unobjectionable advertisements on defendants' trucks, is so entirely unrelated to traffic control as to be arbitrary as matter of law.

[fol. 171] In Court of Appeals of New York

State of New York, ss.:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 20th day of November, in the year of our Lord one thousand nine hundred and forty-seven, before the Judges of said Court.

Witness, The Hon. John T. Loughran, Chief Judge, Presiding.

John Ludden, Clerk.

Remittitur—November 21, 1947

[fol. 172] People &c., Respondent,

vs.

Railway Express Agency, Inc., Appellant

People &c., Respondent,

vs.

Charles Gerchario and 12 Others, Appellants

Be It Remembered, That on the 19th day of May, in the year of our Lord one thousand nine hundred and forty-seven, Railway Express Agency, Inc., and others, the appellants in these causes, came here unto the Court of Appeals, by Davis, Polk, Wardwell, Sunderland & Kiendl, their attorneys, and filed in the said Court, Notices of Appeal and return thereto from the judgments of the Court of Special Sessions of the City of New York. And People &c., the respondent in said cause, afterwards appeared in said Court of Appeals by Charles E. Murphy, its attorney.

[fol. 173] Which said Notices of Appeal and return thereto filed as aforesaid, are hereunto annexed.

Whereupon, The said Court of Appeals having heard these causes argued by Mr. Ralph M. Carson—of counsel for the appellants, and by Mr. Stanley Bucksbaum—of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgments appealed from herein be and the same hereby are affirmed.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the

Court of Special Sessions of the City of New York, there to be proceeded upon according to law.

Therefore, It is considered that the said judgments be affirmed as aforesaid —.

And hereupon, as well the Notices of Appeal and return thereto aforesaid as the judgment of the Court of Appeals [fol. 174] aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Court of Special Sessions of the City of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Court of Special Sessions before the Justices thereof, &c.

John Ludden, Clerk of the Court of Appeals of the State of New York.

Court of Appeals, Clerk's Office,
Albany, November 20, 1947:.

I Hereby Certify, that the preceding record contains a correct transcript of the proceedings in said causes in the Court of Appeals, with the papers originally filed therein, attached thereto.

John Ludden, Clerk.

[fols. 175-176] In Court of Appeals of New York

[Titles omitted]

Order Denying Motion for Reargument—January 15, 1948

A Motion for a re-argument of the above cause, having been heretofore made upon the part of the appellants herein, and papers having been duly submitted thereon, and due deliberation thereupon had:

Ordered that the said motion be and the same hereby is denied.

A Copy.

Raymond J. Cannon, Deputy Clerk.

[fol. 177] SIR:

Please Take Notice that the within is a true copy of an order entered this day in the office of the Clerk of the Court of Appeals of the State of New York.

Dated, January 15, 1948.

Yours, etc. John P. McGrath, Corporation Counsel, Attorney for Respondent, Municipal Building, Borough of Manhattan, City of New York.

To: Davis, Polk, Wardwell, Sunderland & Kiendl, Esqs.

[fol. 178] IN COURT OF APPEALS OF NEW YORK

[Titles omitted]

NOTICE OF ENTRY OF ORDER

SIR:

Please Take Notice, that an order of the Court of Appeals, of which the within is a true copy, was duly entered and filed in the Office of the Clerk of the Court of Appeals, Albany, New York, on the 15th day of January, 1948.

Dated: New York, N. Y., January 22, 1948.

Yours, etc., Davis, Polk, Wardwell, Sunderland & Kiendl, Attorneys for Defendants-Appellants, Office and Post Office Address, 15 Broad Street, New York 5, N. Y.

To: John P. McGrath, Esq., Corporation Counsel for the City of New York, Attorney for Plaintiff-Respondent, Municipal Building, Borough of Manhattan, New York, N. Y.
[fol. 179] Clerk of the Court of Special Sessions of the City of New York, Appellate Part, First Judicial Department, 100 Centre Street, Borough of Manhattan, New York, N. Y.

[fol. 180] In Court of Appeals of New York

Present, Hon. John T. Loughran, Chief Justice, Presiding.

The People &c., Respondent,

vs.

Railway Express Agency, Inc., Appellant

The People &c., Respondent,

vs.

Charles Gerchario, Michael Long and 11 others, Appellants

Order Amending Remittitur—January 15, 1948

A motion to amend the remittitur herein having heretofore been made upon the part of the appellants, papers having been submitted thereon and due deliberation having been thereupon had, it is

Ordered, that the said motion be and the same hereby is granted and the remittitur amended by adding thereto the following:

A question under the Federal Constitution was presented and necessarily passed upon by this Court, viz: Whether Article 9, Section 124 of the Traffic Regulations of the Police Commissioner of the City of New York is repugnant to the Fourteenth Amendment or to Article 1, Section 8, of the Constitution of the United States. This Court held that the Traffic Regulation aforesaid is not repugnant to said provisions of the Constitution of the United States.

[fol. 181] And the Court of Special Sessions of the City of New York, Appellate Part, First Judicial Department, is hereby requested to direct its Clerk to return said remittitur to this Court for amendment accordingly.

(Sd.) Raymond J. Cannon, Deputy Clerk. (Seal.)

[fol. 182] [Stamp:] A copy of the within paper has this day been received at the office of the Corporation Counsel, Jan. 23, 1948. John P. McGrath, Corporation Counsel.

[fol. 183] In Court of Appeals of New York

[Titles omitted]

Petition for Appeal to the Supreme Court of the United States

To the Chief Judge of the Court of Appeals of the State of New York:

Your petitioners, Railway Express Agency, Inc., a Delaware corporation authorized to do business in this State, and an interstate common carrier by motor vehicle, Charles Gerchario, Michael Long, Thomas McCabe, Milton Mulhare, Jeremiah McCarthy, George Bauer, Herman Gipes, John Murray, Howard Broems, Frank Reilly, Charles Harrington, Edward Halloran and Emil Hugo Miller, respectfully show:

1. Your petitioners are the appellants in the above-entitled consolidated causes.

2. On July 2, 1945, petitioner Railway Express Agency, [fol. 184] Inc., was convicted in the Magistrates Court of the City of New York of a charge of violating Section 124, Article IX, of the Traffic Regulations promulgated by the Police Commissioner of the City of New York, under the authority allegedly conferred upon him by Section 435 of the Charter of the City of New York, adopted by referendum and effective January 1, 1938.

3. On March 28, 1946, the remaining petitioners Charles Gerchario and others, were convicted of a charge of violating said Section 124 of the Traffic Regulations. At the time of their conviction, these petitioners were employed by and operated motor delivery vehicles of the petitioner Railway Express Agency, Inc.

4. Section 124, Article IX, of the Traffic Regulations of the City of New York reads:

"§ 124. Advertising vehicles.

No person shall operate or cause to be operated, in or upon any street an advertising vehicle, provided that

nothing herein contained shall prevent the putting of business notices upon such business delivery vehicles, so long as such vehicles are engaged in the usual business or regular work of the owner and not used merely or mainly for advertising."

5. All the petitioners were convicted of violating the foregoing Regulation on the ground that the vehicles operated by them displayed posters advertising things and events other than the business of petitioner Railway Express Agency, Inc. (Fols. 217, 350-51, 79, 80, 88, 89, 97, 98, 160, 161).

[fol. 185] 6. On July 27, 1945, the petitioner Railway Express Agency, Inc., filed in the Appellate Part of the Court of Special Sessions of the City of New York, First Judicial Department, notice of appeal from its conviction in the Magistrates Court (Fols. 7-18), and on April 12, 1946, the other petitioners filed similar notices of appeal in that Court (Fols. 19-30).

7. On January 21, 1947, the Court of Special Sessions affirmed, in a *per curiam* opinion, the judgments of conviction (Fols. 397-414), officially reported in 188 Misc. 324.

8. On February 18, 1947, Hon. John T. Loughran, Chief Judge of the Court of Appeals, granted permission to petitioners to appeal to that Court (Fols. 415-419). On February 27, 1947, pursuant to said permission, petitioners filed notice of appeal to the Court of Appeals in the Office of the Clerk of the Court of Appeals (Fols. 1-6).

9. On October 15, 1947, petitioners' appeal came on for argument in the Court of Appeals. On November 20, 1947, the Court of Appeals having heard said appeal, ordered and adjudged that the judgments appealed from be affirmed. Three members of the Court dissented on the ground, as stated in their memorandum opinion, that

> "This regulation of the Police Commissioner [Section 124, Article IX, Traffic Regulations of the City of New York], as interpreted to forbid these unobjectionable advertisements on defendant's trucks is so unrelated to traffic control as to be arbitrary as a matter of law."

[fol. 186] 10. On January 5, 1948, petitioners moved to reargue their appeal in the Court of Appeals, and to amend

the remittitur from said Court. On January 15, 1948, the Court of Appeals denied petitioners' motion to reargue their appeal in said Court, but granted petitioners' motion to amend the remittitur so as to read:

> "Questions under the Federal Constitution were presented and necessarily passed upon by this Court, viz: that Article 9, Section 124 of the Traffic Regulations of the Police Commissioner of the City of New York is repugnant to the Fourteenth Amendment and to Article 1, Section 8 of the Constitution of the United States. This Court held that the traffic Regulations aforesaid are not repugnant to said provisions of the Constitution of the United States."

Thereafter, on January 28, 1948, the remittitur was amended accordingly and, as amended, forwarded to the Court of Special Sessions of the City of New York.

11. The petitioners from the inception of these cases have asserted the unconstitutionality of Section 124 in the Magistrates Court, the Court of Special Sessions of the City of New York, and the Court of Appeals, as follows:

A. *Magistrates Court of the City of New York*

12. In its answer to the complaint served upon it (the other petitioners were served with summonses only), petitioner, Railway Express Agency, Inc., pleaded, among others, the following defenses (Fols. 193-95):

> "*For a Second Defense:*
>
> 3. Alleges that, if construed to prohibit the carrying of paid advertising by the defendant on its delivery vehicles while operated in the streets of New York [fol. 187] City in the transportation of merchandise in the usual conduct of the business of the defendant, § 124 of the Traffic Regulations is arbitrary, unreasonable and void, and exceeds the powers delegated by the State of New York to the City and to the Police Commissioner.
>
> *For a Third Defense:*
>
> 4. Alleges that, if construed as set forth in paragraph 3 hereof, § 124 of the Traffic Regulations would deprive

the defendant of its property without due process of law in violation of the State and Federal Constitutions.

For a Fourth Defense:

5. Alleges that the defendant, a corporation of the State of Delaware doing business in the State of New York, employs delivery vehicles in the City of New York preponderantly in the carriage of goods in interstate commerce, and carries paid advertising in its vehicles as an incident to the carriage of goods, and that § 124 of the Traffic Regulations, if construed as set forth in paragraph 3 hereof, would exceed the police powers of the State of New York and be an unconstitutional interference with interstate commerce."

13. In oral argument before Magistrate Morris Rothenberg, the following was stated by counsel for petitioner Railway Express Agency, Inc. (Fols. 332-334):

"Mr. Carson: In connection with the Corporation Counsel's remarks, I might remind Your Honor that the Court of Appeals, in a case cited in our brief, has said that the Police Commissioner's power to make regulations having the force of law, is conditioned upon their being reasonable.

The construction which the Corporation Counsel urges your Honor to put on this regulation, as we have shown, would be unreasonable.

But we primarily, without waiving our constitutional rights, urge upon Your Honor to apply the regulation as written, to allow the Railway Express Agency to carry business notices, not only its own, but those of others, in the prosecution of its business of carrying goods, because those notices relate to the goods it carries."

[fol. 188] B. *Court of Special Sessions*

14. In their Notices of Appeal, petitioners stated as grounds for appeal (Railway Express Agency, Inc., Fols. 11-13; Charles Gerchario, et al., Fols. 23-25):

"4. That under the construction put upon said § 124 by the Magistrate it violates the rights of the defendant

under the Fourteenth Amendment of the United States Constitution and Article I, Section 6, of the Constitution of the State of New York.

5. That the business delivery vehicles of the defendant (including those described in the information) using the streets of the City of New York preponderantly carry goods in interstate commerce and that the construction of said § 124 by the Magistrate constitutes an undue burden upon interstate commerce and exceeds the police power of the City of New York.

6. That under the construction put upon said § 124 by the Magistrate it deprives defendant of the equal protection of the laws in violation of the Fourteenth Amendment of the United States Constitution and Article I, Section 11 of the Constitution of the State of New York."

15. The *per curiam* opinion of the Court of Special Sessions affirming the judgments of conviction concludes as follows (Fols. 413, 414):

"It is our conclusion that the regulation bears a reasonable relationship to the subject of traffic control and public safety and that it reasonably comes within the charter grant of power to the Police Commissioner. In our opinion, the regulation is constitutional."

C. *Court of Appeals*

16. In the affidavit of Ralph M. Carson, of counsel to the petitioners, sworn to January 24, 1947 and submitted in [fol. 189] the Court of Appeals in support of the motion of petitioners for leave to appeal to the Court of Appeals, the following questions of law, among others, were said to be presented by the record and to be of such nature as to merit review by the Court of Appeals:

"(e) Whether a construction of § 124 adverse to the appellants would not be unconstitutional as (i) making an unreasonable and arbitrary distinction between business notices and general advertising, (ii) depriving Railway Express of its property in the use of the sides of delivery vehicles for advertising incidental to the

permitted transportation of goods, (iii) exceeding the powers delegated to the Police Commissioner under the New York City Charter (*Bus Depot Holding Corporation* v. *Valentine*, 288 NY 115), (iv) making an unreasonable classification between business notices and advertising in the exercise of the administrative duty of traffic regulation, (v) denying the appellants equal protection of the laws by reason of the arbitrariness of said distinction, and (vi) exceeding the police power of the City of New York and unduly burdening interstate commerce (*People* v. *Horton Motor Lines*, 281 NY 196)."

17. Upon the basis of said affidavit, the Chief Judge of the Court of Appeals granted leave to appeal and certified that questions of law existed which ought to be reviewed by the Court of Appeals (Fol. 417).

In their brief in this Court, petitioners argued (Appellants' Brief, pp. 71-91):

"Point VI—The Regulation, as Construed by the Prosecution, Deprives Appellants of Due Process and the Equal Protection of the Law in Violation of Their Rights Under the State and Federal Constitutions" (p. 71).

Point VII—The Police Commissioner's Regulation is a Direct and Undue Burden on Interstate Commerce" (p. 82).

[fol. 190] 18. The respondent, People of the State of New York, argued in the Court of Appeals (Respondent's Brief, pp. 20-29) that

"The Traffic Regulation as construed below is constitutional."

and argued under this point that Section 124 does not violate the due process or equal protection clauses of the Fourteenth Amendment to the Federal Constitution and does not constitute an undue burden on interstate commerce.

19. In these causes, therefore, there is drawn in question the validity of Section 124, Article IX of the Traffic Regulations of the City of New York as promulgated by the

Police Commissioner of said City, on the ground that said statute is repugnant to the Constitution and laws of the United States. And the decision of the Court of Appeals sustaining the validity of Section 124 against petitioners' attack was necessarily a rejection of petitioners' contention that said statute is repugnant to the Fourteenth Amendment and to Article I, Section 8 of the Constitution of the United States.

20. Therefore, in accordance with § 237 (a) of the Judicial Code (28 U. S. C. A. § 344) and in accordance with the Rules of the Supreme Court of the United States, your petitioners respectfully show this Court that these cases are ones in which, under the legislation in force when the Act of January 31, 1928 (45 Stat. 54) was passed, to wit, under § 237 (a) of the Judicial Code, a review could be had in the Supreme Court of the United States on a writ of error, as a matter of right.

[fol. 191] 21. The errors upon which your petitioners claim to be entitled to an appeal are more fully set out in the Assignment of Errors, filed herewith, pursuant to Rules 9 and 46 of the Rules of the Supreme Court of the United States, and there is likewise filed herewith a statement as to the jurisdiction of the Supreme Court of the United States, as provided by Rules 12 and 46 of the Rules of the Supreme Court of the United States.

22. No previous application for the relief prayed herein has been made to this Court or to any Judge thereof.

Wherefore, your petitioners pray for the allowance of an appeal from the Court of Appeals of the State of New York, the highest court of said State in which a decision in this cause can be had, to the Supreme Court of the United States, in order that the decision and final judgment of the Court of Appeals may be reviewed; that a transcript of the record, proceedings and papers in these causes, duly authenticated by the Clerk of the Court of Appeals under his hand and the seal of said Court, may be sent to the Supreme Court of the United States, as provided by law; that an order be made fixing the amount and kind of security to be required of the petitioners, and that the bond for costs

tendered by the petitioners be approved and that the said appeal operate as a supersedeas.

Dated: New York, N. Y., February 11, 1948.

Railway Express Agency, Inc. (one of the petitioners), by E. T. Williams, Executive Assistant, Davis Polk Wardwell Sunderland & Kiendl, Attorneys for Petitioner.

[fol. 192] *Duly sworn to by E. T. Williams. Jurat omitted in printing.*

[fol. 193] [Stamp:] A copy of the within paper has this day been received at the office of the corporation counsel, Feb. 17, 1948. John P. McGrath, Corporation Counsel.

[fol. 194] In Court of Appeals of New York

[Titles omitted]

Assignment of Errors

The defendants-appellants, in connection with and as part of their petition for the appeals herein, make the following assignment of errors upon which they will rely in the prosecution of their appeals to the Supreme Court of the United States from the judgment of the Court of Appeals of the State of New York entered November 20, 1947 (reargument denied January 15, 1948) affirming judgments of the Magistrates Court of the City of New York convicting petitioners of violating Section 124, Article IX of the Traffic Regulations promulgated by the Police Commissioner of the City of New York:

1. That the Court of Appeals erred in not finding that Section 124, Article IX of said Traffic Regulations as ap-
[fol. 195] plied to the petitioners in the circumstances of these cases, and as interpreted to forbid advertisements on the trucks of petitioner Railway Express Agency, Inc., in so far as said advertisements advertise things or events other than the business of said petitioner, is so unrelated to traffic control as to be repugnant to the Fourteenth Amendment of the Constitution of the United States, in depriving the

petitioners of liberty and property without due process of law, and in denying them the equal protection of the laws.

2. That the Court of Appeals erred in not finding that said Section 124, when applied and construed as aforesaid, is repugnant to Article I, Section 8 of the Constitution of the United States, as placing an undue burden upon interstate commerce.

Wherefore, on account of the errors hereinbefore assigned, petitioners pray that the said judgment of the Court of Appeals of the State of New York, dated the 20th day of November, 1947 in the above entitled causes, be reversed, and that these causes be remanded to said Court of Appeals for further proceedings not inconsistent with such reversal.

Dated, New York, N. Y., February 16, 1948.

Davis, Polk, Wardwell, Sunderland & Kiendl, Attorneys for Petitioners, Office & P. O. Address: 15 Broad Street, Borough of Manhattan, City of New York.

[fol. 196] [Stamp:] A copy of the within paper has this day been received at the office of the corporation counsel; Feb, 17, 1948. John P. McGrath, Corporation Counsel.

[fol. 197] In Court of Appeals of New York

[Titles omitted]

Order Allowing Appeal to the Supreme Court of the United States—February 16, 1948

The petition of Railway Express Agency, Inc., Charles Gerchario, Michael Long, Thomas McCabe, Milton Mu[illegible]aro, Jeremiah McCarthy, George Bauer, Herman Gipes, John Murray, Howard Broems, Frank Reilly, Charles Harrington, Edward Halloran and Emil Hugo Miller, the Appellants in the above entitled causes, for an appeal therein to [fol. 198] the Supreme Court of the United States from the judgment of the Court of Appeals of the State of New York affirming judgment convicting the Appellants of violating Section 124, Article IX of the Traffic Regulations, promulgated by the Police Commissioner of the City of New York, having been filed and presented herein, accompanied by

assignments of error and statement as to jurisdiction, all as provided by Rule 46 of the Rules of the Supreme Court of the United States, and the record in these causes having been considered, it is hereby

Ordered that appeals be and are hereby allowed to the Supreme Court of the United States from the final judgment dated the 20th day of November, 1947, of the Court of Appeals of the State of New York, as prayed in said petition, and that the Clerk of the Court of Special Sessions of the City of New York shall, within forty days from this date, make and transmit to the Supreme Court of the United States, under his hand and the seal of said Court, a true copy of the material parts of the record herein, which shall be designated by *praecipe* or stipulation of the parties or their counsel herein, all in accordance with Rule 10 of the Rules of the Supreme Court of the United States; and it is

Ordered Further that the said Appellants shall give a good and sufficient supersedeas bond, in the sum of $500.00/100 that said Appellants shall prosecute said appeals to effect and answer damages and costs if they fail to make their appeals good, and that said supersedeas [fol. 199] bond, when filed and approved, shall stay all proceedings in these causes until the final disposition of the same by the Supreme Court of the United States.

John T. Loughran, Chief Judge of the Court of Appeals of the State of New York.

Dated: Albany, N. Y., February 16th, 1948.

[fol. 200] [Stamp:] A copy of the within paper has this day been received at the office of the corporation counsel, Feb. 17, 1948. John P. McGrath, Corporation Counsel.

[fols. 201-203] Bond on appeal for $500.00 approved Feb. 18, 1948, omitted in printing.

[fols. 204-205] Citation in usual form showing service on Corporation Counsel, omitted in printing.

[fol. 206] SUPREME COURT OF THE UNITED STATES

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD

To: The Clerk of the Court of Special Sessions of the City of New York, Appellate Part, First Department:

You are hereby requested to make a transcript of record to be filed in the Supreme Court of the United States, pursuant to the appeals allowed in the above-entitled causes, and to include in such transcript the following papers and exhibits, including the record on appeal of the above consolidated causes on appeal to the Court of Appeals of the State of New York. Where the papers to be included in this transcript of record are in the record on appeal in the Court of Appeals, the papers are designated by appropriate folio numbers.

[fol. 207] 1. Summons, Railway Express Agency, Inc. (fols. 178-180).

2. Affidavit of Police Officer George W. Haner accompanying summons (fols. 181-189).

3. Answer of Railway Express Agency, Inc. (fols. 190-197).

4. Trial and testimony in the Magistrates Court of the City of New York, in Railway Express Agency, Inc. (fols. 199-327).

5. Decision of Magistrate in Railway Express Agency, Inc. (fols. 328-336).

6. Magistrate's Return on Appeal, in Railway Express Agency, Inc. (fols. 31-48).

7. Summons in Charles Gerchario, et al.

(1) Charles Gerchario (fols. 61-69)
(2) Michael Long (fols 70-78)
(3) Thomas McCabe (fols. 79-87)
(4) Milton Mulhare (fols. 88-96)
(5) Jeremiah McCarthy (fols. 97-105)
(6) George Bauer (fols. 106-114)
(7) Herman Gipes (fols. 115-123)
(8) John Murray (fols. 124-132)
(9) Howard Broems (fols. 133-141)
(10) Frank Reilly (fols. 142-150)
(11) Charles Harrington (fols. 151-159)

(12) Edward Halloran (fols. 163-168)
(13) Emil Hugo Miller (fols. 169-171).

8. Trial and testimony in Charles Gerchario, et al. (fols. 337-357).

9. Proceedings on Sentence, in Charles Gerchario, et al. (fols. 358-369).

10. Magistrate's Return on Appeal, in Charles Gerchario, et al. (fols. 49-60).

11. Notice of appeal by Railway Express Agency, Inc., to the Court of Special Sessions, Appellate Part, First Department (fols. 7-15).

[fol. 208] 12. Notice of Appeal by Charles Gerchario, et al., to the Court of Special Sessions, Appellate Part, First Department (fols. 19-30).

13. Opinion per Curiam, Court of Special Sessions, Appellate Part, First Department (fols. 397-414).

14. Order of Affirmance, Court of Special Sessions, Appellate Part, in Railway Express Agency, Inc. (fols. 385-390).

15. Order of Affirmance, Court of Special Sessions, Appellate Part, in Charles Gerchario, et al. (fols. 391-396).

16. Order of the Court of Appeals certifying questions of law and granting leave to appeal (fols. 415-419).

17. Notice of Appeal to the Court of Appeals, in Railway Express Agency, Inc. (fols. 373-378).

18. Notice of Appeal to the Court of Appeals, in Charles Gerchario, et al. (fols. 379-384).

The following additional papers are to be included in the transcript of record to be filed in the Supreme Court of the United States:

19. Decision of the Court of Appeals, dated November 20, 1947, affirming the judgments of conviction of Railway Express Agency, Inc., and Charles Gerchario, et al.

20. Order of the Court of Appeals, dated November 20, 1947, affirming the judgments of conviction of Railway Express Agency, Inc., and Charles Gerchario, et al.

21. Order of the Court of Appeals, dated January 16, 1948, denying motion of Railway Express Agency, and Charles Gerchario, et al., to reargue appeals in the Court of Appeals.

22. Order of the Court of Appeals, dated January 16, 1948, granting motion of Railway Express Agency, Inc., and

Charles Gerchario, et al., to amend remittitur from the Court of Appeals.

23. Amended remittitur from the Court of Appeals.

24. Petition to Appeal to the Supreme Court of the United States.

[fol. 209] 25. Order of Chief Judge John T. Loughran, granting appeal to the Supreme Court of the United States.

26. Statement of Jurisdiction.

27. Assignment of Errors.

28. Citation.

29. Admission of Service and Notice under Rule 12, paragraph 3, of the Rules of the Supreme Court of the United States.

30. The following Points of the briefs in the Court of Appeals of appellants Railway Express Agency, Inc., and Charles Gerchario, et al.:

(a) Point VI, pp. 71-82;

(b) Point VII, pp. 82-91.

31. The following Exhibits of appellant Railway Express Agency, Inc.:

(1) Exhibit A—Copy of Certificate of Incorporation of Railway Express Agency, Inc., dated December 6, 1928;

(2) Exhibit B—Minutes of meeting of Board of Directors of Railway Express Agency, Inc., dated October 27, 1942;

(3) Exhibit C—Minutes of meeting of Board of Directors of Railway Express Agency, Inc., dated January 26, 1943.

32. The following Exhibits of respondent People of the State of New York:

(a) Exhibit No. 3—Photograph of left side of truck of Railway Express Agency, Inc., bearing license number 290413, advertising the motion picture, "Without Love"; Spencer Tracy and Katherine Hepburn; M. G. M.

(b) Exhibit No. 4—Photograph of right side of same truck, advertising "Ringling Brothers and Barnum and Bailey Circus".

(c) Exhibit No. 5—Photograph of left side of truck of Railway Express Agency, Inc., bearing license number 290855, advertising, "I'd Walk a Mile for a Camel". [fols. 210-211] (d) Exhibit No. 6—Photograph of right side of same truck, advertising "Ringling Brothers and Barnum and Bailey Circus".

(e) Exhibit No. 7—Photograph of right side of truck of Railway Express Agency, Inc., bearing license number 291146, advertising "W.O.R. tune in 710. This is Mutual."

(f) Exhibit No. 8—Photograph of left side of same truck, advertising "Ringling Brothers and Barnum and Bailey Circus".

33. This praecipe with proof of service thereof.

Davis, Polk, Wardwell, Sunderland & Kiendl, Attorneys for Appellants, Office and Post Office Address, 15 Broad Street, New York, N. Y.

Service of the above praecipe accepted and acknowledged, this — day of —, 1948.

— —, Attorney for Respondent.

[Stamp:] A copy of the within paper has this day been received at the office of the Corporation Counsel, Mar. 9, 1948, John P. McGrath, Corporation Counsel.

[fols. 212-213] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 214] SUPREME COURT OF THE UNITED STATES

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed May 13, 1948

Pursuant to Rule 13, Paragraph 9, of the Revised Rules of the Supreme Court of the United States, Appellants in the above-entitled appeals state that they intend to rely upon all the points in their assignment of errors now on file in the Supreme Court of the United States.

Appellants deem the entire record, as filed in the Supreme Court of the United States in the above-entitled causes, necessary for consideration of the points relied upon.

[fol. 215] In addition, Appellants deem Points VI and VII of their Brief On Appeal in the Court of Appeals of the State of New York, which has been filed in the Supreme Court of the United States together with the record, to be necessary to the record to be printed in the Supreme Court of the United States, and therefore request that these Points beginning with page 71 of the said Brief, to and including page 91, be included in the said record on appeal in the Supreme Court of the United States.

Davis, Polk, Wardwell, Sunderland & Kiendl, Attorneys for Defendants-Appellants, Office and P. O. Address: 15 Broad Street, New York 5, N. Y.

Due service and receipt of a copy of the foregoing statement of points to be relied upon and designation of the parts of the record to be printed is hereby acknowledged this 11 day of May, 1948.

John P. McGrath, Corporation Counsel of the City of New York, Attorney for Respondent, Municipal Building, Borough of Manhattan, City of New York, N. Y.

[Stamp:] A copy of the within paper has this day been received at the office of the Corporation Counsel, May 11, 1948, John P. McGrath, Corporation Counsel

[fol. 216] [File endorsement omitted.]

[fols. 217-218] In Court of Appeals of New York

People of the State of New York, Respondent,

against

Railway Express Agency, Inc., Defendant-Appellant

People of the State of New York, Respondent,

against

Charles Gerchario and 12 others, Defendants-Appellants

Brief for Defendants-Appellants

[fol. 219] Point VI

The regulation, as construed by the prosecution, deprives appellants of due process and the equal protection of the law in violation of their rights under the State and Federal Constitutions.

The regulations, as interpreted below and applied to appellants, is not an appropriate exercise of the police power —the sovereign power to impose reasonable regulations upon personal conduct and the use of private property having a real and substantial relation to some aspect of the public welfare. It therefore deprives the appellants of their liberty and property without due process of law in violation of inalienable rights guaranteed to them by both the Federal and State Constitutions.

Moreover, as construed by the prosecution, the regulation arbitrarily places the appellants in a special class, and without any reasonable basis in fact discriminates against them, thereby unconstitutionally depriving them of the equal [fol. 220] protection of the laws.

It is settled that even though an enactment may be fair on its face, yet if it is applied and administered by public authority in a manner which is itself unreasonable or fails to accomplish the reasonable objects intended, or makes unjust discriminations between persons in similar circumstances, it is not within the police power. *Yick Wo v. Hopkins*, 118 U. S. 356.

As we have seen, although Section 124 purports to be a "regulation of traffic", in practical operation and effect it is a prohibition of a business not inherently vicious, and indeed recognized as legitimate—the business of mobile or vehicular advertising. By his edict, the Police Commis-

sioner would destroy that business in the City of New York and he would enforce the abolition by closing every street in the city to vehicles operated in the enterprise, with the added sanction of penal punishment for those engaged in their operation.

Assuming, without conceding, that some abuses having relation to traffic conditions have attended the conduct of the business of vehicular advertising in the City of New York, "mere abuse incident to an occupation ordinarily useful is not enough to justify its abolition, although regulation may be entirely proper". *Meyer* v. *Nebraska*, 262 U. S. 390, 403; *Adams* v. *Tanner*, 244 U. S. 590, 594; *Pierce* v. *Society of Sisters*, 268 U. S. 510. Absolute prohibition is unreasonable as a matter of law if regulation merely will suffice. *Ribnik* v. *McBride*, 277 U. S. 350; *Brazee* v. *Michi-*
[fol. 221] *gan*, 241 U. S. 340; *Weaver* v. *Palmer Bros.*, 270 U. S. 402; cf. *Powell* v. *Pennsylvania*, 127 U. S. 678.

Here, there has never been an attempt at regulation. Yet if, as the prosecution claims, the relief of traffic congestion is the aim of the regulation, there is nothing to show that this end may not be attained by permitting only a limited number of trucks to display advertising, or by regulating the size and type of advertising to be employed. Certainly, it should be made to appear that these or similar regulatory measures are inherently inadequate or have been unsuccessfully tried before a prohibition so sweepingly destructive as Section 124 may be said to meet the test of reason.

But even if that section be regarded as regulatory only and not prohibitive in scope, it is none the less invalid as applied to appellants. For it violates the principle that an exercise of the police power, to be valid, "must be reasonably calculated to achieve a legitimate public purpose". *Good Humor Corp.* v. *City of New York*, 290 N. Y. 312, 317; *Matter of Mid-State Advertising Corp.* v. *Bond*, 274 N. Y. 82. And if a regulation "purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects . . . it is the duty of the courts to so adjudge". *Mugler* v. *Kansas*, 123 U. S. 623, 661; *Hennington* v. *Georgia*, 163 U. S. 299, 303; *Liggett Company* v. *Baldridge*, 278 U. S. 105.

[fol. 222] Tested by these standards the regulation fails. As applied to the appellants, it has no real or substantial relation either to the reduction of congestion or the further

ance of safety in the city streets. There is nothing to show that the 1900 trucks operated by Railway Express in and out of the City of New York would be reduced, even by so much as one, if the present posters which they display were removed or that, without advertising, they would not traverse streets upon which they are now operated, or would move slower or faster in the delivery of their cargoes. It is undisputed here that the number of trucks and their routes are determined by the requirements of the *freight* and not the *advertisements* they carry.

Nor is there anything in the record to show that motorists or pedestrians are so distracted from due attention to traffic by the posters displayed on Railway Express trucks as to create a traffic hazard; that vehicular collisions or automobile accidents have resulted therefrom; or that vehicles stop in their tracks and people halt where they stand in petrified amazement at this poster display, so as to cause congestion of the movement of traffic.

To the contrary, there are facts of which the Court will take judicial notice, which prove that none of these situations is created. Many times this Court has reiterated the proverbial expression uttered long ago in *Ah Kow* v. *Nunan*, 5 Sawyer 552:

> [fol. 223] ". . . we cannot shut our eyes to matters of public notoriety and general cognizance. When we take our seats on the bench we are not struck with blindness, and forbidden to know as judges what we see as men; . . ."

The members of this Court have seen as men, many times and we dare say in many parts of the State, including New York City, Railway Express trucks bearing posters on their sides. As pedestrians they have walked the streets and as motorists they have driven or ridden in motor cars. We venture the statement that they have not themselves experienced, nor have they witnessed any observable congestion of traffic or public danger created by the advertising display.

It is, of course, true that the posters are designed to attract attention. But in this era of electric signs, of billboards, of car "ads", of magazine and newspaper "full page spreads", of sound amplifiers and sound vehicles, of sky-writing, plane-carried banners and electrified blimps, when every automobile has a radio and every radio pro-

gram has its "commercial", the mobile poster has become commonplace, and to a public surfeited with sales talk, particularly to the cosmopolitan populace of New York City, its power to attract or distract can no longer be said to be a public danger, even if it was in 1909.

In answer to all this, the prosecution simply refers to the *Fifth Avenue Coach Co.* case holding, in the year 1909, that the banning of vehicular "advertising for hire" was not an unreasonable exercise of police power. But a restric- [fol. 224] tion on private enterprise thought reasonable in 1909 may very well be unreasonable today. And this is particularly true of regulations in respect of motor vehicles and advertising, both of which were in their infancy 40 years ago.

Here again, "judicial notice may be taken of facts which are a part of the general knowledge of the country, and which are generally known and have been duly authenticated in a repository of facts open to all, and especially so of facts of official, scientific or historical character . . . And to ascertain such well known facts recourse is had to such documents and references as are worthy of confidence . . ." *Hunter* v. *N. Y. O. & W. R. R. Co.*, 116 N.Y. 615; *Brown* v. *Piper*, 91 U. S. 37.

As the court remarked in the *Fifth Avenue Coach Co.* case, the stages there involved "were drawn by horses prior to 1907" (p. 26). In 1909, when that case was decided, a motor car was as rare a sight on the streets of New York as a horsedrawn wagon is today. As the same court noted in 1908, "Automobiles have but recently come into common use. Within the last few years their use has not only greatly increased, but tours therewith have been extended through many municipalities. Good judgment has not always been exercised in their use, and the rights of others have sometimes been overlooked by their owners or drivers, and, principally in consequence thereof, more or less opposition has arisen to their unrestricted use upon the public streets [fol. 225] and highways. The opposition to such use has frequently found expression in local restrictive rules and ordinances". *City of Buffalo* v. *Lewis*, 192 N.Y. 193, 199.

The Encyclopaedia Britannica (14th Ed.) tells us that it was not until the period 1909-1912 that the production of motor cars became of any great importance. "The prejudice against a new and radical invention, poor road conditions, the comparatively high original cost, the cost of maintenance

and the general unreliability of the cars, all tended to retard rapid introduction of motor vehicles (*id.* vol. 15, p. 881). In 1909, the year of the decision in the *Fifth Avenue Coach* case, there were produced throughout the entire United States, only 127,731 motor vehicles (*id.* p. 881).

It has become part of local tradition that during those early days of automotive experimentation, the appearance of a "horseless carriage" upon the streets was itself an attractive nuisance—the signal for the gathering of street crowds and for the derisive cry of "Get a horse". The early motor car, steam-driven, slow-moving, subject to frequent breakdowns, smoky and noisy, was truly a satanic engine having devastating effect upon peace and safety in the streets. Particularly menacing was its effect on traffic generally, which was then almost universally horse-drawn. When, to such a machine as the automobile then was, advertisements were added consisting of "painted scenes and letters extravagant and gaudy in appearance" (194 N.Y. [Vol. 226] at 24), the prejudicial effect upon the public (including members of the judiciary) can well be imagined. A motor vehicle so bedecked was then in itself a "parade or show" and an intolerable nuisance in the streets.

At that time motor trucks were unknown. It was not until 1911 that their production began in the United States, and then only experimentally. In that year a total of only 10,681 motor trucks was thus produced. Commercial truck production did not have its first real impetus until after the close of World War I, when in 1918, 227,250 trucks were produced in this country (Encyc. Brit. vol. 15, p. 924). That was almost a decade after the *Fifth Avenue Coach Co.* decision.

It is also true that in 1909 automotive advertising, in its modern form and universality, was unknown and hardly dreamed of. The present day "business notices" appearing on the modern, streamlined truck have grown so familiar as to have become an accepted detail of the vehicle.

These revolutionary changes in the daily incidents of motor transportation have rendered obsolete, it seems to us, the decision in the *Fifth Avenue Coach Co.* case, at least in so far as it sustained as reasonable the prohibition of paid advertising on delivery vehicles operated in the regular course of their owners' business. This Court has not hesitated to depart from earlier precedents which, by reason of changed social and economic conditions, are no longer applicable. We respectfully suggest that a similar departure

[fol. 227] from precedent, if need be, is justified in this case. While "it is the function of the court of last resort to pass finally upon the cogency of conflicting arguments and the weight of conflicting considerations" as the late Chief Judge Lehman stated in his learned dissent in *People ex rel. Tipaldo v. Morehead*, 270 N. Y. 233, 241, in which the present Chief Judge concurred and which later became the law (*Chamberlin Inc. v. Andrews*, 271 N. Y. 1, affd. 299 U. S. 515):

> "That does not mean, of course, that a court of last resort may not reconsider the same question when it is again presented, and then reach a contrary conclusion. In the light of wider experience, broader information or changed conditions, the weight that should, reasonably, be given to conflicting considerations may change and error may become manifest. A constitution may be amended only in manner provided therein, but a court which under the Constitution is charged with the duty of construing the Constitution may change its construction when convinced of error. That courts have not been willing to perpetuate a construction after they have been convinced of its unsoundness, has been a source of strength to our system of constitutional government."

Not only is the regulation void as an unreasonable prohibition of a legitimate business and without real and substantial relation to the public welfare, but it is invalid because, as construed by the prosecution, it unfairly discriminates against the owners of vehicles advertising the [fol. 228] products of others and in favor of those owners who are permitted with impunity to utilize their vehicles for self-advertising purposes. As we have earlier pointed out, the theory of the People's case rests upon that very distinction; and these cases were tried upon the concession that if the vehicular advertisements involved had advertised Railway Express, the regulation would not have been contravened.

That distinction, we submit, is one without rational basis. It graphically demonstrates that there is no real relation between the regulation, as interpreted and enforced, and its avowed object of reducing traffic congestion and street hazards. For what is the difference in effect upon either

of those two conditions between a Railway Express truck displaying a poster proclaiming the merits of Camel cigarettes and a truck owned by National Biscuit Company urging the public, by pictorial colored representations painted on its sides, to eat the Uneeda Biscuits which that company makes? The Court will judicially notice that daily upon the streets of New York various manufacturers operate trucks which deliver and also advertise their products. Thus Borden's sometimes delivers its milk in white trucks shaped like a milk-bottle and bearing the legend "Borden's Golden Crest". National Dairy Products Co. delivers its ice cream in huge trucks advertising in gigantic and gaily colored lettering "Hydrox Ice Cream". A roving replica on wheels of one of the cottage-like Chock Full O' Nuts shops reminds the man in the street to drop in for a pound [fol. 229] of pistachios. A package of Life-Savers on wheels delivers that candy and at the same time advertises its merits.

Such instances could be multiplied but to no purpose. They and their like may be seen from every New York City street corner at almost any time. As the regulation has been interpreted, none of these are "advertising vehicles" within the prohibition of the regulation. Yet the only distinction between them and the trucks of Railway Express is that they advertise the products of their owners, while the vehicles of Railway Express advertise the products of others. Obviously, there is no difference in their effect upon traffic congestion or safety. And so it is plain that the regulation is actualy designed only to eliminate vehicular advertising for pay. As such it is unreasonably discriminatory and therefore void as denying the appellants the equal protection of the laws guaranteed to them by both the Fourteenth Amendment to the Federal Constitution and Article 1, Section 11 of the Constitution of the State of New York. *Hartford Co.* v. *Harrison*, 301 U. S. 459, 461, 462; *Mayflower Farms* v. *Ten Eyck*, 297 U. S. 266; *Nashville C. & St. L. Ry.* v. *Walters*, 294 U. S. 405, 429, 432; *Borden's Co.* v. *Baldwin*, 293 U. S. 194, 210; *Iowa-Des Moines Nat. Bank* v. *Bennett*, 284 U. S. 239; *Smith* v. *Cahoon*, 283 U. S. 553, 556, 557; *Louisville Gas & Electric Co.* v. *Coleman*, 277 U. S. 32, 37, 38; *Power Mfg. Co.* v. *Saunders*, 274 U. S. 490, 493; *Royster* [fol. 230] *Guano Co.* v. *Virginia*, 253 U. S. 412; *People* v. *Cohen*, 272 N. Y. 319; *People* v. *Orange County Road Cons. Co.*, 175 N. Y. 84, 89.

In point of fact it might well be held that the distinction between "business notices" and "advertising", urged by the prosecution and adopted by the Courts below, does not exist in the case of Railway Express, since the record shows that substantially all the products advertised by the posters on the sides of trucks are products carried by Railway Express (83, 84, 86, 87). In other words, by the paid advertising they carry, the trucks in question are developing the business of transportation which is their principal business. Nothing of the kind occurred in the case of the Fifth Avenue Coach Company.

Point VII

The Police Commissioner's Regulation is a direct and undue burden on interstate commerce.

The facts recited earlier in this brief (pp. 2-5, *supra*) establish, and it will not be disputed, that Railway Express and the trucks which it operates, including those involved in the instant prosecutions, are engaged in the delivery of goods in interstate commerce. *People* v. *Horton Motor Lines*, 281 N. Y. 196. Further, the advertisements are displayed on the sides of the trucks pursuant to a "nation-wide" advertising contract involving for its performance [fol. 231] the crossing of state lines—in itself a matter of interstate commerce. *Adams Express Co.* v. *New York*, 232 U. S. 14.

As we have seen, the Police Commissioner has not been content merely to regulate that advertising, or even to attempt regulation. His edict decrees that it be discontinued entirely. As a penalty for failure to submit to this sweeping prohibition, he has assumed to deny altogether to Railway Express and to its vehicles the right of passage upon the streets of the City of New York. Thus, he has confronted this interstate carrier with the alternative, at least in the City of New York, of either abandoning the interstate business of vehicular display advertising, or foregoing the interstate business of expressage of goods.

We contend that a so-called "local traffic regulation" having these far-reaching prohibitory consequences upon interstate commerce, is clearly violative of the commerce clause of the Federal Constitution (Article 1, cl. 3, § 8). For if this absolute prohibition may properly be called a "burden", merely, upon that commerce, then here the

burden is not only direct, but extreme in its destructive effect.

Even if there were a real and substantial relation between the regulation and public safety, the resultant impact upon interstate commerce invalidates it. But, as we have seen, wholly apart from considerations of interstate commerce, the regulation is not an appropriate exercise of local police [fol. 232] power (Point VI, *supra*). Therefore, the lack of justification for its direct prohibitory effect upon interstate commerce is complete.

While exertion of the police power essential for protection of the local community may extend incidentally to operations of interstate commerce, the police power does not justify the imposition of direct burdens on that commerce nor its subjection to unreasonable demands. *Smith* v. *Alabama*, 124 U. S. 465; *Hennington* v. *Georgia*, 163 U. S. 299; *N. Y., N. H. & H. R. R. Co.* v. *New York*, 165 U. S. 628; *Lake Shore & M. S. Ry. Co.* v. *Ohio*, 173 U. S. 285. As Mr. Justice Hughes stated in *Adams Express Co.* v. *New York*, 232 U. S. 14, 31:

> "Local police regulations cannot go so far as to deny the right to engage in interstate commerce, or to treat it as a local privilege and prohibit its exercise in the absence of a local license."

In that case, the court declared invalid an ordinance of the City of New York requiring a license for the operation within the City of wagons employed in interstate commerce. Attempt was made to sustain the measure as an appropriate safety precaution taken under the police power. The court did not hold that, in itself, the ordinance was arbitrary or manifestly absurd, but based the finding of unconstitutionality upon its prohibitive effect upon interstate commerce. We can perceive no substantial difference between the ex- [fol. 233] action by a municipal legislature of a license as a condition to operating in interstate commerce, and a policeman's edict that one may not engage in the interstate carriage of goods within city limits unless he also goes out of the interstate business of vehicular advertising.

This case, as we think, falls clearly within the decision in *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761, invalidating, as an undue burden on interstate commerce, an Arizona statute which made it unlawful to operate within that State

a passenger train of more than fourteen, or a freight train of more than seventy cars. The regulation, as the court found, had a serious adverse effect on transportation efficiency and economy, and at the same time it did not appear that the enactment would lessen the danger of accident.

The late Chief Justice Stone said in part for the majority of the Court (pp. 766-769):

> "Although the commerce clause conferred on the national government power to regulate commerce, its possession of the power does not exclude all state power of regulation. Ever since Willson v. Black-Bird Creek Marsh Co., 2 Pet. 245, and Cooley v. Board of Wardens, 12 How. 299, it has been recognized that, in the absence of conflicting legislation of Congress, there is a residuum of power in the state to make laws governing matters of local concern which nevertheless in some measure affect interstate commerce or even, to some extent, regulate it . . .
>
> But ever since Gibbons v. Ogden, 9 Wheat. 1, the states have not been deemed to have authority to im- [fol. 234] pede substantially the free flow of commerce from state to state, or to regulate those phases of the national commerce which, because of the need of national uniformity, demand that their regulation, if any, be prescribed by a single authority . . . .
>
> In the application of these principles some enactments may be found to be plainly within and others plainly without state power. But between these extremes lies the infinite variety of cases in which regulation of local matters may also operate as a regulation of commerce, in which reconciliation of the conflicting claims of state and national power is to be attained only by some appraisal and accommodation of the competing demands of the state and national interests involved . . . ."

Following the *Southern Pacific* case, the Supreme Court in *Morgan* v. *Commonwealth of Virginia*, 328 U. S. 373 held unconstitutional, as an undue burden on interstate commerce, a Virginia statute requiring all passenger motor carriers, both interstate and intra-state, to separate the white and colored passengers so that contiguous seats would

not be occupied by persons of different races at the same time. A violation of the statute was made a misdemeanor. Congress had not legislated with respect to the racial segregation of passengers on motor vehicles in interstate commerce, and the question was squarely presented as to how far a state may exercise its police power over a subject of interstate commerce in the absence of specific federal action. [fol. 235] After stating the general proposition that "where Congress has not acted, state legislation is . . . invalid which materially affects interstate commerce", the majority of the court stated (328 U.S. at 377):

> "The precise degree of a permissible restriction on state power cannot be fixed generally or indeed not even for one kind of state legislation, such as taxation or health or safety. There is a recognized abstract principle, however, that may be taken as a postulate for testing whether particular state legislation in the absence of power by Congress is beyond state power. This is that the state legislation is invalid if it unduly burdens that commerce in matters where uniformity is necessary—necessary in the constitutional sense of useful in accomplishing a permitted purpose. Where uniformity is essential for the functioning of commerce, a state may not interpose its local regulation."

Applying these principles to the Virginia statute, the majority opinion continued (p. 386):

> "As no state law can reach beyond its own border nor bar transportation of passengers across its boundaries diverse seating requirements for the races in interstate journeys result. As there is no federal act dealing with the separation of races in interstate transportation, we must decide the validity of this Virginia statute on the challenge that it interferes with commerce, as a matter of balance between the exercise of the local police power and the need for national uni- [fol. 236] formity in the regulations for interstate travel. It seems clear to us that seating arrangements for the different races in interstate motor travel require a single, uniform rule to promote and protect national travel."

Concurring in separate opinions, Justices Black and Frankfurter found the early decision in *Hall* v. *De Cuir*, 95 U. S. 485, controlling. Justice Black quoted that case as holding to the effect that "uniformity in the regulations by which . . . [a carrier] is to be governed from one end to the other of his route is a necessity in his business" and that it is the responsibility of Congress, not of the states, to determine "what such regulations shall be".

Under the authority of the *Southern Pacific* and *Morgan* decisions the instant case presents an enactment plainly outside the local police power. If this "traffic regulation" may legally be made by a municipal police commissioner, certainly statutes of like tenor may be constitutionally passed by every State legislature in the land. The net result would be the imposition of a state-created but nation-wide restraint upon the right to conduct interstate commerce—a condition which, unless complied with, would prohibit the right to carry goods interstate by railway express, and which, if complied with, would abolish altogether the right to advertise by interstate vehicular display. This is not therefore a case where determination of the validity of the local law involves a delicate balancing of [fol. 237] national against local interests. For the local regulation is such that, as against it, the national interest cannot survive.

But we need not go so far as to assume the adoption by all the states and all their municipalities of similarly prohibitive "traffic regulations". The supposition that only some of them might do so is enough to condemn such legislation. In that event, the movement of the appellant's trucks from state to state and from city to city would be seriously impeded, involving the removal of the advertisements upon entering a state or municipality having such legislation and their restoration upon entering one not so legislating. As the court said analogously in the *Southern Pacific* case (325 U.S. at 773-774):

> "Enforcement of the law in Arizona, which train lengths remain unregulated or are regulated by varying standards in other states must inevitably result in an impairment of uniformity of efficient railroad operation because the railroads are subjected to regulation which is not uniform in its application. Compliance with a state statute limiting train lengths requires

> interstate trains of a length lawful in other states to be broken up and reconstituted as they enter each state accordingly as it may impose varying limitations upon train lengths. The alternative is for the carrier to conform to the lowest train limit restriction of any of the states through which its trains pass, whose laws thus control the carriers' operations both within and without the regulating state . . . With such laws in force in states which are interspersed with those [fol. 238] having no limit on train lengths, the confusion and difficulty with which interstate operations would be burdened under the varied system of state regulation and the unsatisfied need for uniformity in such regulation, if any, are evident."

Consequently, it is evident that if vehicular display advertising by an interstate carrier is to be prohibitive or even regulated, the prohibition will have to be universal or the regulation will have to be uniform, and either result will have to flow from Congressional action.

In the *Southern Pacific* case, the Court found that the effects of the statute, outlined immediately above, were such as to interpose "a substantial obstruction to the national policy proclaimed by Congress, to promote adequate, economical and efficient railway transportation service. Interstate Commerce Act, preceding § 1, 54 Stat. 899" (325 U. S. at 773). A similar policy with respect to interstate motor vehicle transportation has been declared by Congress in the Motor Carriers Act (Title 49 USCA §§ 301-327 incl.). In that statute, "Congress sought to set out its purpose and the range of its action in a declaration of policy which covered the preservation and fostering of motor transportation in the public interest, tariffs, the coordination of motor carriage with other forms of transportation and cooperation with the several states in their efforts to systematize the industry"; and "efficient and economical movement in interstate commerce is obviously [fol. 239] a major objective of the Act". *U. S.* v. *Amer. Trucking Ass'ns*, 310 U. S. 534, 538; and see *Maurer* v. *Hamilton*, 309 U. S. 598, 606; Motor Carrier Act, Sec. 202, 49 USCA § 302.

As the police regulation here in question constitutes a "substantial obstruction" to the policy thus declared, it

may not be permitted to stand (*Southern Pacific Co.* v. *Arizona*).

Conclusion

The judgments of conviction should be reversed and the summons dismissed in the case of each of the appellants, with costs.

Respectfully submitted, Davis Polk Wardwell Sunderland & Kiendl, Attorneys for Defendants; Ralph M. Carson, C. C. Evans, William R. Meagher, Aloysius J. Castellano, of Counsel.

New York, October 14, 1947.

[fols. 240-241] Supreme Court of the United States

Order Noting Probable Jurisdiction—June 21, 1948

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on cover: File No. 53,016. New York Court of Appeals. Term No. 51. Railway Express Agency, Inc., Charles Gerchario, Michael Long, et al., Appellants; vs. People of the State of New York. Filed May 4, 1948. Term No. 51, O. T. 1948.